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THE
T R I A L
O F

Lieutenant CHARLES BOURNE,

UPON THE PROSECUTION OF

Sir JAMES WALLACE, Knt.

F O R A N

A S S A U L T:

A L S O

The LAW PLEADINGS, the ARGUMENTS
of COUNSEL, and the SPEECH of Mr. Justice
WILLES upon passing JUDGMENT.

Taken in Short-Hand by Mr. BLANCHARD.

TO WHICH ARE ADDED

The whole of the AFFIDAVITS on both Sides;
the additional AFFIDAVITS offered to the COURT
by the DEFENDANT'S COUNSEL, and the
RESOLUTIONS of the MARINE CORPS
on his CONDUCT.

With NOTES by Mr. BOURNE.

L O N D O N:

Printed for S. BLADON, No. 13. Pater-noster Row.

MDCCLXXXIII.

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Rec. May 15, 1900.

THE KING

On the PROSECUTION of

SIR JAMES WALLACE, KNT.

A G A I N S T

LIEUT. CHARLES BOURNE,

FOR A LIBEL.

MIDDLESEX.

INDICTMENT charges; that Sir James Wallace, Knt. for divers, to wit, eleven years before the printing and publishing of any of the several false, scandalous, infamous, wicked, and malicious libels hereinafter mentioned, had been, and was an officer, that is to say, a captain, in his Majesty's navy; and lately before the printing, and publishing of the false, scandalous, infamous, and defamatory libels hereinafter mentioned, had been the captain and commander of a certain ship of war, of our said Lord the King, called the Warrior, and that whilst the said Sir James Wallace was commander of the said ship of war, Charles Bourne, late of Westminster, in the said county of Middlesex, Gentleman, was an officer on board of and belonging to the said ship, that is to say, a lieutenant of marines, on board the said ship, that is to say at Westminster aforesaid, in the said county; and that the said Sir James Wallace always behaved and conducted himself on board the said ship, called the Warrior, towards the said Charles Bourne, and the other officers on board the said ship with propriety; *so wit*, at Westminster aforesaid, in the said county.

B

That

That the said Charles Bourne well knowing the premises, but being an ill-disposed person, and of a wicked and malicious temper and disposition, and unlawfully, unjustly, wickedly, and maliciously, devising, designing, contriving, and intending, to asperse, scandalize, and vilify, the said Sir James Wallace, and unjustly to impeach the courage, veracity, and honour of the said Sir James Wallace; and unjustly to insinuate, and as much as in him, the said Charles Bourne lay, to cause it to be believed, that the said Sir James Wallace was destitute of every principle of honour, and every idea of a gentleman, and that he was a dastardly coward and scoundrel, and that he, the said Sir James Wallace, abused his authority of commander of the said ship, called the Warrior, and had treated the said Charles Bourne with unmerited insolence and abuse, whilst the said Charles Bourne was so on board the said ship, and under the command of the said Sir James Wallace as aforesaid, on the 23d day of December, in the 23d year of the reign of our Sovereign Lord, George the Third, now King of Great-Britain, France, and Ireland, Defender of the Faith, with force and arms, at Westminster aforesaid, in the said county of Middlesex, in a certain public newspaper, intituled the Morning Herald, and Daily Advertiser, No. 671, Monday, December, 23, 1782, a certain false, wicked, scandalous, and malicious libel, with the name of him the said Charles Bourne thereunto set, of and concerning the said Sir James Wallace, and of and concerning his behaviour, as commander of the said ship of war, called the Warrior, towards the said Charles Bourne, did most unlawfully, scandalously, wickedly, and maliciously, print and publish,

lish, and cause to be printed and published, in which said libel, of and concerning the said Sir James Wallace, and of and concerning his behaviour as commander of the said ship of war, called the Warrior, are contained divers false scandalous, wicked, and malicious matters, according to the tenor following, that is to say, For the Morning Herald, Mr. Editor, In answer to a Letter in the Herald of this day, signed "James Wallace," I, (meaning himself, the said Charles Bourne,) am to observe the paragraph therein alluded to, was not inserted either by me, or by my knowledge, and whatever Sir James Wallace, (meaning the said Sir James Wallace) may think, it requires very little discernment to discover his motives for obtruding a private quarrel on the notice of the public. The assertion of Sir James Wallace, (meaning the said Sir James Wallace) "that I never once came to the point, either in Jamaica, Bath, or London,"* I shall leave for the unprejudiced mind to determine on, by stating a few facts, but I must first observe, that it is with infinite regret I find myself obliged to trouble the public with a detail so uninteresting, which yet I hope they will allow is become absolutely necessary for the vindication of my honour. On my arrival in England I was informed that Sir James Wallace, (meaning the said Sir James Wallace) was at Bath; my feelings, as an officer and a man, induced me to hasten thither, either to receive ample apology for the insults I had suffered, or to give him, (meaning the said Sir James Wallace) that chastisement he so justly merited at my hands. When at Bath,

B^a Bourne not

* See the letter here alluded to, signed James Wallace, in Mr. Bourne's affidavit, and in the affidavit of Mr. Barr, printer of the Morning Herald.

not being able to obtain an interview with Sir James Wallace, (meaning the said Sir James Wallace) I sent him the following note, "Mr. Bourne acquaints Sir James Wallace, that if he, (meaning the said Sir James Wallace) persists in not seeing him, (meaning the said Charles Bourne) it will confirm the opinion Mr. Bourne has long entertained, that Sir James Wallace is destitute of every principle of honour, and every idea of a gentleman. Mr. Bourne understanding that Sir James Wallace, (meaning the said Sir James Wallace) has ladies with him, is the reason he does not call on him in person." White-Lion, Friday Morn. To this note I received a verbal answer in these words, "very well." Next day I saw him, (meaning the said Sir James Wallace) in the street, on which I told him I was glad to meet him, but was sorry his conduct put it out of my power to treat him as a gentleman, on which he pulled out a pistol and cocked it at my breast, declaring he would shoot me. I pointed out the impropriety of his conduct and urged a more private meeting, which he refusing, I shook my cane over his (meaning the said Sir James Wallace's) head, applying such epithets as I thought his then conduct deserved; ten minutes after I called at his house properly prepared; he being denied, I wrote the following letter, and however distressing it may be for a gentleman to use such language, I was obliged to suit it to the behaviour of the person to whom it was to be addressed. "To Sir James Wallace," (meaning the said Sir James Wallace) "Sir, I, (meaning himself the said Charles Bourne) yesterday, by letter acquainted you, (meaning the said Sir James Wallace) that I, (meaning himself, the said Charles Bourne) considered

" considered you (meaning the said Sir James
 " Wallace) as destitute of every principle of
 " honour, and every idea of a gentleman; your
 " infamous behaviour this morning in the street,
 " convinces me (meaning the said Charles
 " Bourne) that you (meaning the said Sir James
 " Wallace) are a dastardly coward and scoun-
 " drel; when I (meaning the said Charles
 " Bourne) was on board the ship, you (meaning
 " the said Sir James Wallace) commanded, you
 " (meaning the said Sir James Wallace) treated
 " me (meaning himself, the said Charles Bourne)
 " with the most unmerited insolence and abuse,
 " because you (meaning the said Sir James
 " Wallace) knew it was not in my power
 " (meaning the power of the said Charles Bourne)
 " to resent it, (meaning such insolence and
 " abuse). When no longer under your command
 " I seized the first opportunity at Jamaica of
 " demanding that satisfaction of you which an
 " injured gentleman had a right to expect, you
 " (meaning the said Sir James Wallace) then
 " meanly and cowardly escaped from my re-
 " sentment (meaning the resentment of him,
 " the said Charles Bourne) for that time, by
 " giving me to understand that I should hear
 " from you, but in that, you (meaning the
 " said Sir James Wallace) proved yourself
 " (meaning the said Sir James Wallace) a liar.
 " I flew to Bath immediately on my arrival in
 " England; my messages and note to you yester-
 " day must have convinced you what were
 " my intentions, but you dared to offer insults
 " at a time, when you knew they could not be
 " resented, and have not resolution to meet
 " the man whom you so greatly injured. Your
 " flying from Bath shall not protect you from
 " my

" my resentment, the insults I have received
 " from you are too great to be forgotten or
 " forgiven, I (meaning the said Charles Bourne)
 " shall expose you (meaning the said Sir James
 " Wallace) in the public prints, as the scoun-
 " drel, I (meaning the said Charles Bourne)
 " know you (meaning the said Sir James Wal-
 " lace) to be, and treat you (meaning the said
 " Sir James Wallace) as such wherever I (mean-
 " ing the said Charles Bourne) meet you;
 " (meaning the said Sir James Wallace) for
 " which purpose I (meaning the said Charles
 " Bourne) will follow you (meaning the said
 " Sir James Wallace) to London, or to any
 " part of the world, " Charles Bourne." Bath,
 " White Lion, Saturday noon." To this I
 (meaning the said Charles Bourne) received the
 same verbal answer as before, and Sir James
 (meaning the said Sir James Wallace) set off
 for London. On my return from Bath a noble-
 man did me the honor of calling on Sir James
 Wallace (meaning the said Sir James Wallace)
 to inform him that I was in town, and to know
 his determination, but could not see him, as I
 suppose he was closeted, preparing that com-
 plaint of me to the Admiralty, which he men-
 tioned in his letter, without telling the public
 the receipt it met with from that right honou-
 rable board. Without any further comment I
 take my leave of a newspaper, where, I must
 confess, I did not expect to meet Sir James
 Wallace; (meaning the said Sir James Wallace)
 and whatever my own feelings might have
 urged me to, the opinions of many of the re-
 spectable officers of the corps I have the honor to
 serve in, has determined me to look upon him
 much more as an object of my contempt, than
 my

my resentment. Charles Bourne, Whitehall Chambers, Saturday, December 21st, 1782. In contempt of our said sovereign lord the king and his laws, to the great scandal, infamy, disgrace, damage, injury, and discredit of the said Sir James Wallace, to the evil and pernicious example of all others in the like case offending, and also against the peace, &c.

SECOND COUNT. That Charles Bourne, well knowing the premises aforesaid, but being such person as aforesaid, and unlawfully, unjustly, wickedly, and maliciously devising, designing, contriving, and intending as aforesaid, afterwards, (*to wit*) on the said 23d day of December, in the said 23d year of the reign of our said present sovereign lord the king, with force and arms at Westminster aforesaid, in the said county of Middlesex, in a certain public newspaper, intituled the Morning Herald and Daily Advertiser, No. 671, Monday, December 23, 1782, unlawfully, wickedly, and maliciously did print and publish, and cause and procure to be printed and published, a certain other false, wicked, scandalous and malicious libel of and concerning the said Sir James Wallace, in which said last mentioned libel are contained, among other things, divers false, scandalous, wicked, and malicious matters of and concerning the said Sir James Wallace, and of and concerning his behaviour, as commander of the said ship of war called the Warrior, towards the said Charles Bourne, that is to say in one part thereof, according to the tenor following, (*to wit*.) On my (meaning the said Charles Bourne's) arrival in England I was informed that Sir James Wallace (meaning the said Sir James Wallace) was at Bath; my feelings

ings as an officer and a man induced me to hasten thither, either to receive ample apology for the insults I had suffered, or to give him (meaning the said Sir James Wallace) that chastisement he so justly merited at my hands; when at Bath, not being able to obtain an interview with Sir James Wallace; I sent him the following note. "Mr. Bourne acquaints Sir James Wallace (meaning the said Sir James Wallace) that if he (meaning the said Sir James Wallace) persists in not seeing him (meaning the said Charles Bourne) it will confirm the opinion Mr. Bourne has long entertained, that Sir James Wallace (meaning the said Sir James Wallace) is destitute of every principle of honor, and every idea of a gentleman. Mr. Bourne, understanding that Sir James Wallace has ladies with him, is the reason he does not call on him in person. White Lion, Friday morning." To this note I received a verbal answer in these words, "very well." Next day I saw him (meaning the said Sir James Wallace) in the street; on which I told him I was glad to meet him, but was sorry his conduct put it out of my power to treat him as a gentleman; on which he pulled out a pistol and cocked it at my breast, declaring he would shoot me. I pointed out the impropriety of his conduct, and urged a more private meeting, which he refusing, I (meaning the said Charles Bourne) shook my cane over his (meaning the said Sir James Wallace's) head, applying such epithets as I thought his then conduct deserved; ten minutes after I called at his house, properly prepared; he being denied, I wrote the following letter; and however distressing it must be for a gentleman to use such language, I was obliged to suit it to the behaviour of the person to whom
it

it was to be addressed. "To Sir James Wallace." Sir, (meaning the said Sir James Wallace) I (meaning the said Charles Bourne) yesterday by letter acquainted you (meaning the said Sir James Wallace) that I (meaning himself, the said Charles Bourne) considered you (meaning the said Sir James Wallace) as destitute of every principle of honor, and every idea of a gentlemen; your infamous behaviour (meaning the behaviour of the said Sir James Wallace) this morning in the street, convinces me (meaning him, the said Charles Bourne) that you (meaning the said Sir James Wallace) are a dastardly coward and scoundrel; when I (meaning the said Charles Bourne) was on board the ship (meaning the said ship called the Warrior) you (meaning the said Sir James Wallace) commanded, you (meaning the said Sir James Wallace) treated me (meaning him the said Charles Bourne) with the most unmerited insolence and abuse, because you (meaning the said Sir James Wallace) knew it was not in my power (meaning the power of the said Charles Bourne) from my situation (meaning the situation of the said Charles Bourne) to resent it (meaning such insolence and abuse) when no longer under your command I seized the first opportunity at Jamaica of demanding that satisfaction of you which an injured gentleman had a right to expect. You, (meaning the said Sir James Wallace) then meanly and cowardly escaped from my resentment for that time, by giving me to understand that I should hear from you, but in that you (meaning the said Sir James Wallace) proved yourself a liar. I flew to Bath immediately on my arrival in England; my messages and notes to you yesterday, must have convinced you
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what

what were my intentions, but you dared to offer insults at a time when you knew they could not be resented, and have not resolution to meet the man whom you so greatly injured. Your (meaning him the said Sir James Wallace) flying from Bath shall not protect you from my resentment, the insults I have received from you are too great to be forgotten, or forgiven; I (meaning the said Charles Bourne) shall expose you (meaning the said Sir James Wallace) in the public prints as the scoundrel, I (meaning the said Charles Bourne) know you (meaning the said Sir James Wallace) to be, and treat you (meaning the said Sir James Wallace) as such wherever I meet you, for which purpose I will follow you to London, or to any part of the world, Charles Bourne. Bath, White Lion, Saturday Noon." In contempt of our sovereign lord the king and his laws, to the great damage, disgrace, scandal, infamy, disgrace, and injury of the said Sir James Wallace, to the evil and pernicious example of all others in the like case offending, and also against the peace, &c.

THIRD COUNT. That the said Charles Bourne of his farther malice against the said Sir James Wallace, and again unlawfully, wickedly, and maliciously contriving and intending to injure and ruin the character and reputation of the said Sir James Wallace, and unjustly to insinuate and cause to be believed that the said Sir James Wallace was destitute of every principle of honor and every idea of a gentleman, and that he was a coward and a scoundrel afterwards (to wit) on the said 23d day of December, in the said 23d year of the reign of our said present sovereign lord the king, with force and arms, at Westminster

Westminster aforesaid, in the said county of Middlesex, unlawfully, scandalously, wickedly, and maliciously did print and publish, and cause to be printed and published a certain other false, wicked, scandalous, and malicious libel of and concerningt he said Sir James Wallace, in which said last mentioned libel are contained, amongst other things, the several false, scandalous, wicked, and malicious matters following of and concerning the said Sir James Wallace, that is to say, in one part thereof according to the tenor following (*to wit*) Sir (meaning the said Sir James Wallace) I (meaning the said Charles Bourne) yesterday by letter acquainted you (meaning the said Sir James Wallace) that I considered you (meaning the said Sir James Wallace) as destitute of every principle of honor, and every idea of a gentleman; your infamous behaviour this morning in the street convinces me that you (meaning the said Sir James Wallace) are a dastardly coward and scoundrel, in contempt of our said lord the king and his laws, to the great damage, discredit, scandal, infamy, and disgrace of the said Sir James Wallace, to the evil and pernicious example of all others in the like case offending, and also against the peace of our said lord the king, his crown and dignity.

FOURTH COUNT. That the said Charles Bourne, of his further malice against the said Sir James Wallace, and again unlawfully, unjustly, wickedly, and maliciously devising, designing, contriving, and intending to injure and ruin the character and reputation of the said Sir James Wallace, and unjustly to insinuate and cause it to be believed that the said Sir James Wallace was destitute of every principle of honor,

nor, and every idea of a gentleman, and that he was a coward and scoundrel, and had misbehaved himself as commander of the said ship of war called the Warrior, and as such commander had treated the said Charles Bourne with unmerited insolence and abuse on board the said ship; afterwards, (*to wit*) on the 23d day of December, in the 23d year aforesaid, unlawfully, scandalously, wickedly, and maliciously did publish and cause to be published a certain other false, wicked, scandalous, and malicious libel, of and concerning the said Sir James Wallace, and of and concerning the behaviour of the said Sir James Wallace, as Commander of the said ship called the Warrior, towards the said Charles Bourne, in which said last mentioned libel are contained, amongst other things, divers false, scandalous, wicked, and malicious matters of and concerning the said Sir James Wallace, and of and concerning his behaviour as commander of the said ship towards the said Charles Bourne, according to the tenor following (that is to say) Sir (meaning the said Sir James Wallace) I (meaning the said Charles Bourne) yesterday by letter acquainted you (meaning the said Sir James Wallace) that I (meaning himself the said Charles Bourne) considered you (meaning the said Sir James Wallace) as destitute of every principle of honor, and every idea of a gentleman, your infamous behaviour (meaning the behaviour of the said Sir James Wallace) this morning (meaning morning) in the street, convinces me (meaning him the said Charles Bourne) that you (meaning the said Sir James Wallace) are a dastardly coward and scoundrel; when I (meaning the said Charles Bourne) was on board the ship (meaning the said ship called the

the Warrior) you (meaning the said Sir James Wallace) treated me (meaning the said Charles Bourne) with the most unmerited insolence and abuse, because you (meaning the said Sir James Wallace) knew it was not in my power (meaning in the power of the said Charles Bourne) from my situation (meaning the situation of the said Charles Bourne) to resent it (meaning such insolence and abuse) when no longer under your command I seized the first opportunity at Jamaica of demanding that satisfaction of you which an injured gentleman had a right to expect, you (meaning the said Sir James Wallace) then meanly and cowardly escaped from my resentment for that time, by giving me to understand, that I should hear from you, but in that you (meaning the said Sir James Wallace) proved yourself (meaning the said Sir James Wallace) a liar. I flew to Bath immediately on my arrival in England, my messages and note to you yesterday must have convinced you what were my intentions, but you dared to offer insults at a time when you knew they could not be resented, and have not resolution to meet the man whom you so greatly injured; your (meaning the said Sir James Wallace) flying from Bath shall not protect you from my resentment, the insults I have received from you are too great to be forgotten, or forgiven; I (meaning the said Charles Bourne) shall expose you (meaning the said Sir James Wallace) in the public prints as the scoundrel I (meaning the said Charles Bourne) know you to be, and treat you, (meaning the said Sir James Wallace) as such wherever I meet you, for which purpose I will follow you to London, or to any part of the world, Charles Bourne. Bath, Saturday noon,
White,

White Lion. In contempt of our said sovereign lord the king, and his laws, to the great damage, discredit, scandal, infamy, and disgrace of the said Sir James Wallace, to the evil and pernicious example of all others in the like case offending, and also against the peace of our said sovereign lord the king, his crown and dignity.

Witnesses,

*William Sleight
Sir Jas Wallace
Robert Elliott
William Easton
William James
Thomas Hurleston
John Foy
George Burroughs*

Upon this indictment the defendant suffered judgment to go by default.

[31]

THE KING
On the PROSECUTION of
SIR JAMES WALLACE, KNT.
AGAINST
LIEUT. CHARLES BOURNE,
FOR AN ASSAULT.
MIDDLESEX.

INDICTMENT charges, that Charles Bourne, late of the parish of St. Martin in the Fields, in the county of Middlesex, Gent. being a person of wicked and malicious mind and disposition, and not regarding the laws of this kingdom, and having conceived great malice, hatred, and ill will towards Sir James Wallace, Knt. a peaceable liege subject of our said lord the king, on the 6th day of February, in the 23d year of our sovereign lord George the third, king of Great Britain, and so forth, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and maliciously did make an assault upon the same Sir James Wallace, then and there being in the peace of God and our said lord the king; and that the said Charles Bourne with *a certain large walking stick*,* which he then and there had, and held in his right hand, then and there unlawfully, maliciously, and violently did strike and beat him the said Sir James Wallace in and upon the head and left arm of him the said Sir James Wallace, giving to

* See Mr. Coomb's affidavit in the Appendix, by which it appears this great walking stick was a light cane.

to him, the said Sir James Wallace, with the walking stick aforesaid divers severe and dangerous blows, strokes, and bruises, in and upon the head and left arm of him the said Sir James Wallace, with *intention* then and there feloniously, wilfully, and of the malice aforethought of him the said Charles Bourne to *kill and murder** the said Sir James Wallace, and the said Charles Bourne, then and there unlawfully and maliciously did other wrongs to the said Sir James Wallace, to the great damage of the said Sir James Wallace, in contempt of our said lord the king and his laws, and against the peace, &c.

SECOND COUNT, charges, that the said Charles Bourne, being a person of a wicked and malicious mind and disposition, and not regarding the laws of this kingdom, afterwards, (that is to say) on the said 6th day of February, in the 23d year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and maliciously did make another assault upon the said Sir James Wallace, then and there being in the peace of God, and our said lord the king, and that the said Charles Bourne, with a certain *large walking stick*, which he then and there had, and held in his right hand, then and there unlawfully, maliciously, and violently did strike and beat him, the said Sir James Wallace, giving to him the said Sir James Wallace with his walking stick, aforesaid, divers severe and dangerous blows, strokes, and bruises in and upon the head and left arm of him the said Sir James Wallace, and the said Charles Bourne

* See Mr. Bescroft's argument in aggravation, wherein this charge is given up.

Bourne then and there unlawfully and maliciously did other wrongs to the said Sir James Wallace, to the great damage of the said Sir James Wallace, in contempt of our said lord the king; and his laws, and against the peace, &c.

THIRD COUNT charges that the said Charles Bourne afterwards, that is to say on the 6th day of February, in the 23d year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, did make another assault upon the said Sir James Wallace, then and there being in the peace of God; and our said lord the king, and then and there did beat, bruise, wound, and ill-treat the said Sir James Wallace, so that his life was greatly endangered of, and then and there did other wrongs to the said Sir James Wallace to the great damage of the said Sir James Wallace, and against the peace, &c.

Witness,

Sir James Wallace, Knt.

To this indictment the defendant pleaded
NOT GUILTY.

Had Mr. Bourne been indicted simply for an *assault*, he would have pleaded *guilty*, as the *blow* given by him to the plaintiff, with a *small cane*, being intended as a *public chastisement*, was a fact he neither wished to *palliate*, nor to *deny*, but he thought it incumbent on him to controvert the diabolical charge of an *intent to commit murder*. See Mr. Bearcroft's speech at opening the trial, wherein the *intent to commit murder* is given up!

In the King's-Bench, June 5, 1783.

Before the Hon. Mr. JUSTICE BULLER,
and a Special Jury,

The KING against CHARLES BOURNE, Esq.

MR. ADAM opened the indictment, which he stated to be for an assault upon the person of Sir James Wallace, by unlawfully beating him with a walking stick upon the head, &c. whereby his life was greatly despaired of, &c.

Mr. BEARCROFT. May it please your lordship, and you gentlemen of the jury, I am of counsel in this case, upon the behalf of the prosecution against the defendant, Mr. Charles Bourne. The charge on this indictment is for an assault upon Sir James Wallace. That assault is charged in two different ways in the indictment, and the difference is extremely important, for the first charge is for an assault, with the highest aggravation that an assault can be attended with, that is to say, with an intention to commit murder. The circumstances which attended this assault, in fact, perfectly warranted the advice of Sir James's friends; the manner in which it was laid, which is not uncommon in less aggravated cases than the present; the grand jury too have found the indictment true, with that aggravation; however, as there are circumstances which I confess, and in opinion of all Sir James Wallaces's counsel, might lead a reasonable man to doubt, whether it really was attended with that flat intention; we all thought, and we had no difficulty

to persuade Sir James Wallace, that the conduct upon his part, would be more proper and generous, not to go upon that part of the charge; you will not be sorry therefore to find that you are relieved from that consideration, I mean the aggravation of the assault itself by the intention to commit murder; an aggravation, which if it were made out in evidence, most undoubtedly would have infinitely more weight than the single offence of the assault itself. You will understand therefore that your inquiry is reduced to a very short, and a very plain question, that is to say, whether the defendant, Mr. Bourne, has not committed an assault upon the person of Sir James Wallace.

When I am standing up to prosecute for an assault upon Sir James Wallace, I may be permitted, I trust, to say a word about him. It is a delicate business, and upon a delicate part of the question, I trust I shall be excused if I say this, that Sir James Wallace's name prevents any man from entertaining any suspicion of the impropriety or dishonour of applying to a court of law. I am aware there is some degree of impropriety in a court of law of making any thing like an apology for appealing to it, at the same time I am persuaded every gentleman will think thus much might have been said with no degree of impropriety.

Gentlemen, it was easy for me to persuade Sir James Wallace to abstain from going upon the first charge, attended with the aggravation I have mentioned; it was a great deal more difficult for us to advise him, and succeed in it, as at last we did, that he should forbear at present going into the circumstances of a dispute for a great length of time, which had subsisted between the defendant and Sir James Wallace. When I have stated to you as I have, that the simple bu-

finess of this moment will be, for you to try, whether the defendant is, or is not, guilty of an assault, my lord, I am afraid, will immediately tell you, it is improper to enter into a long history of preceding circumstances, for months before that time. I rejoice, however, and the counsel for Mr. Bourne have a right to say, and undoubtedly will say, precisely the same thing, that a time will come, and the proper moment will arrive, when he shall come up for judgment upon this, as well as upon another occasion, when that other matter, with propriety may be discussed here, and in such a way too, that the evidence upon both sides that with propriety is entered into here, will be to be considered in the court above. I am therefore not asking you to form a judgment upon that point against Mr. Bourne, neither will the counsel for Mr. Bourne ask for that judgment against Sir James Wallace, it will relieve you extremely, and therefore nothing of that sort should pass now upon this occasion, when it is impossible any thing should pass that could be perfectly satisfactory, or considered as a full enquiry upon the present occasion. It remains, therefore, and I have only shortly to state to you the evidence, which, is of a sort that will not and cannot be disputed upon the part of the defendant*. I am to say to you, that upon the 6th of February, as Sir James Wallace was walking in the street, in his way to the Admiralty, he was met by the defendant, Bourne, who I understand is an officer in the marine service; instantly as Mr. Bourne perceived Sir James Wallace he made use of these expressions, "You damned scoundrel, Sir James Wallace," and immediately struck him with a stick, with a brass

* See note, page 17.

brass head, upon Sir James Wallaces head*, with such violence, that it cut his hat almost round, that it cut through a leather which is frequently worn in the front of hats, and was attended with some violent contusions, which will be proved to you by the surgeon, and it was a most fortunate circumstance, with such violence, were these blows administered, that at this moment Sir James is alive to tell you this story, and Mr. Bourne is now to be prosecuted for a misdemeanour. I am instructed, that the surgeon, who is the best judge of this business, will tell you, the odds were very much against him, being struck upon that part, whether it would not be attended with immediate death. I shall call a person who is perfectly indifferent to either party, who saw the beginning of the affray, another, that saw a great part of it, besides Sir James Wallace, will of course be called to give his account; the case is reduced to this single question, Is the defendant guilty of an assault? If I prove this case, or any thing like it, your task will be, and you have nothing to do, but to pronounce the defendant guilty. I will take up no more of your time, except I may be permitted to say this, that Sir James Wallace is well known to be of great public courage and intrepidity, and if any body was to sit down to make a list of naval officers that have done honor to the navy of this country, Sir James Wallace's name would be the first amongst them.

Sir James Wallace sworn. Examined by Mr. Sylvester.

Q. Please to relate, Sir, what happened to you upon the 6th of February last, as you was going to the Admiralty?

A. It

* See Mr. Coomb's affidavit. APPENDIX.

A. It was about the middle of the day, I was going to Mr. Drummond's, I had called at Mr. Drummond's, and was going to call in at the Admiralty, when Mr. Bourne met me in the street, near Buckingham-court, I think it is near to the Admiralty, he came upon me with these words, "You scoundrel, Sir James Wallace," or something to that purpose, and with a stick that appeared to be a cane, with a metal head, as he turned it in his hand.

Q. What sort of a cane was it?

A. It appeared to be a cane with a metal head. He turned the stick in his hand, and with the head (it was) struck me with such violence over the head, as to go through my hat, cut through my hat and the leather, and stunned me for some time.

Q. That was the hat you had on?

A. This is the hat, cut just in the state he left it.

Q. Did he do any thing else?

A. Upon receiving the blows I was stunned, I put my hand up to cover my head, I recovered my senses again, and then I pressed on, and began cudgelling with my stick, until we were separated by the mob.

Q. You received several upon your arm?

A. I received several upon my arm, several upon my head, two upon my head in particular.

Q. Had you struck Bourne before you received those blows?

A. No.

Q. Had you seen him before he came up to you?

A. A very short time before he came up to me.

Q. What condition was you in after these blows?

Why,

A. Why, Sir, I was stunned for some time, and by putting up my hand to my head, which saved my head, the blood returned and I recovered; then I pressed on upon him, and the *cudgelling began**, till we were separated by the mob.

Q. What condition was your head in?

A. My head was violently contused, and stunned for some time, and I verily believe, if the blows had struck me upon the temple or top of the head, they happened to fall upon the strongest part of the head, if they had struck me upon the temple or middle of the skull, I verily believe it would have fractured my skull.

Q. You was afterwards attended by a Surgeon.

A. Yes.

Q. Court. Had you more than one blow before you both struck each other with the stick?

A. I had several blows and was stunned, and put my arm up here, by a kind of natural impulse, and then recovered again, then the *cudgelling* began.

Q. You had more than one blow over the head before the *cudgelling* began?

A. Several. He began and laid on as fast as he could, like a scoundrel as he is.

Q. Describe the blows he gave you before you was able to return them.

A. I believe I did not receive less than a dozen.

Q. You represent yourself as stunned?

A. I was stunned with the blow.

(The bat produced, cut through.)

Q. Jury. Pray, Sir James, were there any menacing words used at the time, otherwise than what are said to be used by the counsel.

A. I think

* This fact of *cudgelling* was not stated by the judge, when he made his report in court.

A. I think he began by calling me scoundrel; but there were but few words passed before the blows.

Q. No other words but abusive words?

A. None but abusive words.

Cross examined by Mr. Solicitor General.

You, I am sure, will do the justice to state to the court and jury, this was not the first time you had had some difference?

A. Sir, for a long time he has run about the world propagating the most infernal falsehoods, tending to prejudice the minds of mankind, and to destroy my character, and at the time he knew I was wanting to bring this on for hearing.

Court. It is not for this purpose to go into it now, I suppose you will go into it much fuller hereafter.

Mr. Solicitor General. I know that perfectly well, I am sure you would not have the by-standers suppose this quite the beginning of the matter, and this done quite so causelessly.

Mr. Bearcroft. I thought I stated this was not the proper stage.

Court. Whether Sir James is wrong, or Mr. Bourne is wrong, it has nothing to do with the prosecution here.

Mr. Bearcroft. I have no objection to go into the whole matter.

Mr. Solicitor General. I don't mean to go with minuteness into it, I only ask whether Mr. Bourne had complained of your conduct to him, when he was under your command going to Jamaica.

Q. Never properly*.

Court. We are not going into the merits whether you were right or he right.

Mr. Solicitor General. I only ask whether Mr. Bourne conceived himself ill used, and that was the consequence of what followed?

* See Mr. Bourne's affidavit, when he states his having complained of Sir James Wallace's conduct to Lord Rodney, &c.

A. I don't know.

Q. Had it not been stated by Mr. Bourne that he had great cause of complaint of severe rigorous ill-usage of an officer?

A. I was at that time putting myself upon my country to be judged whether I had behaved ill to him, and then at this time it began.

Q. Court. There had been a misunderstanding between you before he thought himself ill-used and had complained?

A. I believe that is very well understood.

Mr. Bearcroft. He says he had complained, but that matter was then coming to trial who was right or wrong.

A. That is very fair.

Mr. Solicitor General. Do you mean when you say that matter was coming to trial, that the propriety of your conduct to him as an officer, or his to you as an officer, was coming before a proper judicature to decide that or some collateral matter about a libel?

A. I mean my whole conduct might be weighed against his.

Q. Before what court was it coming on for trial?

A. Before the grand jury.

Q. That was upon the libel?

A. Upon the charge for the libel?

Q. Then that was all, was it—there was no other investigation at that time was there?

A. Unless we come into the whole of this matter, have I any right to answer this gentleman every particular question?

Court. Yes—If he asks you any thing improper I will stop him.

Mr. Solicitor General. I should be very sorry to do it.

Sir James Wallace. Are you going into the first part; I understand we are not to go on at present upon it—I should be very glad to know what I am to say to this?

Q. I want to ask this fact, whether, at the time you said he knew all your conduct to him and his towards you was coming on to be decided in a court of justice, whether you meant any prosecution instituted against you by a court-martial or any thing of that sort, to bring your conduct in question?

A. I suppose the time for the court-martial was elapsed at the same time I submitted my whole conduct to my country.

Q. Now are you quite sure, from your recollection upon the subject, that this blow was in such a very short period after he met you in the street, or whether there had not been a previous conversation that occupied some time, as there might be a good deal in a minute or two?

A. I admitted there were words, but very short.

Q. Do you recollect what the words were?

A. I think it was you scoundrel, Sir James Wallace.

Q. Was that all that was said?

A. Upon my word that is all I know.

Q. No speech that was opprobrious—no other words passed?

A. No not a word.

Q. He said nothing to you but you scoundrel, Sir James Wallace, and hit you a blow upon the head?

A. Yes.

Q. That was the whole of it?

* See Mr. Adam's argument, wherein he acknowledges that the time for granting the court martial was *not* elapsed.

A. Yes.

A. Yes.

Q. Was any body present?

A. No; I had nobody but myself.

Q. Was any body walking with Mr. Bourne?

A. I believe there was, he seemed to have more friends there than I had in the street; I believe in company with him; but I cannot tell who they were.

Q. You had your eyes in your head and you could see whether Mr. Bourne, whose person you was perfectly acquainted with; you know his person perfectly well, and a good deal of his character?

A. I know him perfectly well.

Q. You know a good deal of his character?

A. Yes, indeed.

Q. You could see whether he was alone or in company at the time you met?

A. I believe there was a person with him; whom he quitted—he quitted the person he was walking with and came up to me.

Q. Could you tell the person he was with?

A. I believe him to be a clerk in the Admiralty.

Q. Had you seen him before?

A. I think I had.

Q. You knew his person at the time?

A. Yes.

Q. And perhaps his name?

A. I did not know his name—I had seen him before.

Q. How near was you to him at the time this thing happened?

A. I suppose he might have been some yards from us.

Q. Near enough to hear what passed, but you don't recollect it?

A. Upon my word you would not have had much recollection if you had had the same blows upon your scull.

Q. You had no conversation more?

A. I don't recollect any thing more.

Q. You will not say there was more?

A. I don't recollect it.

Q. You don't recollect a single word passed relative to your conduct to him, or his conduct to you, but the expressions before he struck you?

A. Some abusive language and very short, and he followed it with blows, I am not confident to that single word, to the best of my recollection it was you scoundrel, Sir James Wallace.

Q. I wish you would recollect.

A. Upon my word I do not recollect.

Q. But there might be a good deal more?

A. I cannot recollect any more, but a good deal did pass—what would you have me say?

Q. Why only say you do not know if you don't recollect?

A. I have said so half a dozen times—its teasing me.

Q. I don't mean by way of teasing, but I want an answer?

A. There was some abusive language.

Q. But what you do not know?

A. It was you scoundrel, Sir James Wallace.

Q. Court. You don't recollect any other words?

A. Upon my word, my lord, I do not.

Q. I dare say Sir James don't know the fact;—you might not perhaps have had attention enough at the time to take notice whether Mr. Bourne had any stick at all in his hand, but was walking without one till he happened to see you?

A. Upon

A. Upon my word I don't recollect it.

Q. I am desired to ask you, and I will suggest it to you, whether you was willing to do Mr. Bourne that justice his character you knew demanded; whether he did not ask you that before any blows happened?—Do you recollect any thing of that sort?

A. No, I do not, and besides if he had, the matter was in such a train then I think in honor I could not, the prosecution was to be commenced in a day or two, and if he did I do not recollect it.

Q. Not one way or the other?

A. No.

Q. If he had you should have treated it with neglect, having instituted a prosecution you should have declined it?

A. Have I a right to answer that question?

Court. I don't know exactly Mr. Solicitor what you are driving at—I don't know what you mean by doing that justice his character was entitled to—If you mean any thing that is improper to be asked in a court of justice, Sir James should not answer it.

Mr. Solicitor General. No, I meant nothing of that sort—nothing like that in the world.

Court. Put your question a little more pointed.

Mr. Solicitor General. You recollect nothing about it you said—Now, have you seen that stick with which he struck you?

A. I never saw it but in his hand.

Q. Whether he had any when you first saw him, or whether he borrowed it from a gentleman in company you don't know.—No answer.

* See Mr. Coombe's affidavit in the Appendix, wherein it is sworn that Mr. Bourne had not a stick.

Mr. Bearcroft. Will you recollect what became of the stick?

A. Upon my word I believe it was broke—I think I saw it afterwards, the head was fallen off.

Q. You was asked about a court-martial—Did you apply to the Admiralty for a court-martial?

A. I did.

Q. What was the answer you received?

A. That I ought to have tried it in the *first instance*.* I forgot the particular answer, but they declined it afterwards.

Mr. Weldon sworn.—Examined by Mr. Laws.

Q. What are you?

A. An Attorney.

Q. I believe you was near the place when this happened on the 6th of February.

A. Quite at the place, it was in the course of last term, I was returning from the Hall, and passing along the street almost opposite the Admiralty, there was some motion or bustle just by the Admiralty Gates almost; whoever the persons were that had been engaged they were at that time separated, and people were dispersing—I crossed over the way, having business at the Admiralty; it was not matter of curiosity altogether. I crossed over the way, and went into the yard, and into the office of Mr. Maddock, at that office I saw some clerks, and I believe Mr. Bourne; I believe I said, who have you been beating there, he said Sir James Wallace.

Q. Do you recollect any thing else?

A. He was in a heat of passion.

* See page 26, *ante*, wherein Sir James Wallace accounts for the refusal of the court martial, by swearing he supposes the time for granting one was elapsed. See also note, p. 26.

Q. Do you recollect the words?

A. I don't recollect whether he did not say that scoundrel, or rascal, Sir James Wallace, he was in a passion,

Q. Who were the persons present besides?

A. There were three or four clerks there speaking of the parts of it they had seen, but upon my word I did not pay any great attention to what passed. I did not see any thing of it myself.

Q. He did not see any thing about the beating?

A. No I don't recollect I did.

Q. This was in the presence of Bourne?

A. Both parties are strangers to me.

Q. You owe it to justice to recollect what passed, therefore be so good to mention the whole of it?

A. The clerks spoke more than Mr. Bourne himself, each of them were relating the part of it they had seen.

Q. They mentioned this in the presence of Mr. Bourne?

A. In the presence of Mr. Bourne—every body was talking at once.

Q. Do you recollect any thing else?

A. No, except there was a stick broke, and a part flung over the Admiralty wall.

Q. This was in the presence of Mr. Bourne, and not denied by him?

A. To be sure.

Mr. Bearcroft. Do you recollect any particular expression made use of by Mr. Bourne in that conversation?

A. No upon my word, I do not, but I asked him, I know I said who is it you have been beating, or something to that purpose; and he said that

that scoundrel, or rascal (I forget which) Sir James Wallace, I believe he spoke it in the heat of passion—I was much surprized.

Mr. Graswell sworn.—Examined by Mr. Adam.

Q. You live opposite the Admiralty?

A. Near it upon the same side—I am a linen-draper.

Q. Do you recollect what passed between Mr. Bourne and Sir James Wallace?

A. Some time in February last I was in the shop and heard a noise in the street, and I looked through the window and saw two gentlemen fighting; one I understood to be Lieutenant Bourne, his hat was upon the ground, and the other I afterwards understood (as I was a stranger to both parties) was Sir James Wallace, and had his arm extended in this manner, while the other was beating him; I saw Lieutenant Bourne strike him upon the arm and about the shoulder; Sir James had no weapon in his hand to defend himself at that time, that I saw; after this I saw Sir James close with Lieutenant Bourne, and seemed to me to wrench the stick out of his hand, upon this Lieutenant Bourne turned about, and walked away. I then saw a Mr. Goodall go up to Sir James, and take him by the coat, and drew him out of the crowd—(he is a clergyman.)

Examined by Defendant's Counsel.

Q. I will just ask you one question—You did not see the beginning of this?

A. No, Sir, I did not.

Mr.

Mr. Farquhar sworn. Examined by Mr. Bearcroft.

Q. I believe you was called in to attend Sir James Wallace.

A. I was Sir.

Q. Will you be so good as to give an account from your observation of the consequences of these blows, and the danger of them?

A. It was upon the 6th of February, at seven in the evening, I saw Sir James Wallace; he told when he came in he had got a severe threshing, or beating, by lieutenant Bourne of the marines, that he had been making applications himself, but as he was feverish, and it was towards dinner-time when the affair happened, he thought he had better be bled; I examined, and upon his forehead very severe blows had been given, there was a contusion, a swelling and puffing, and what is usually called black and blue, they were severe blows. Sir James also said he had got severe blows upon his arm, I found the arm pretty much in the same state with his head, very much bruised.

Q. What part of the head?

A. Particularly here, two severe blows, whether it was done by a cane or not, I cannot pretend to say, but the two severe blows were here.

Q. Upon a dangerous part?

A. I believe every blow upon the head is dangerous.

Mr. Solicitor General, I rise, Gentlemen, to say a word or two to you, upon a subject that is one of the most unpleasant, and ought to be one of the most unpleasant, perhaps not only to the two gentlemen, who are the contending parties in this prosecution, but to every gen-

gentleman that has any sense of feeling or of honor, and that can enter into those sentiments which belong in a greater degree perhaps than to most other men, to gentlemen that are educated to, and live in, a military profession, and character, that has a tendency to inspire delicacy and honor, and perhaps they are more delicate in their feelings than others; this is a kind of prosecution not often brought by gentlemen in that situation, not frequently. I don't mean to contend before you, that a military or naval officer has not just as good a right to appeal to the laws of his country for redress, in any grievance whatever, either to his person, or his reputation, or his property, as any civil man. I do not mean to say that he has not, however there are cases, unquestionably, in which it is impossible for the laws of this country, constituted as they are, and constructed upon the whole as they are, to be dispensed with; there are a thousand cases, and especially between persons like these, that neither of the contending parties can feel any thing like justice in such kind of prosecutions. It is not possible. I will state for instance, the principle I durst say was told you by my learned friend before I came in, which I admit to be a principle of law, and, my lord, I am sure, if the cause called for it, will tell you it was so, for instance, that words, however vexatious or opprobrious, however irritating and inflaming, are not a justification, even of a fillip upon the nose. That is the law of England. I have heard that law laid down, and I myself was counsel not a great while ago, in a cause of, a gentleman that may for ought I know be one of the hearers, he was one of my own profession. An action was brought against that gentleman,

tleman, by another of the profession, for a very violent assault, a very violent blow; there was very provoking language, and the gentleman called him over and over a liar, he gave him a blow, and knocked two of his teeth down his throat; in that case words were no justification of the blows, and my friend remained unjustified; there was a verdict against him, but that verdict, gentleman, was such a verdict, such an one that shewed the sense of the person that tried it, and the judge that superintended it, the jury gave damages to the amount of *one penny*, and the judge would not certify, the battery was proved, and such was the rigor of the law, he struck the man a blow and therefore he must pay for it; and the law is not to be violated because it may bear hard upon this or that particular case, it may be wise upon the whole, and they are not to give way to expediency upon occasions like this. I say the law being in this, and a thousand instances, very incompetent to satisfy the feelings of gentlemen of honour and spirit, a great deal will remain to be done which is not before you. Indeed the question you are to try, as Sir James Wallace has thought proper to bring the question before you, all you have to try is, whether Sir James Wallace was, or not, in fact, assaulted by Mr. Bourne, the defendant; why, Gentlemen, Mr. Bourne never denied he assaulted him, never, this is not to bring any great secret to the view of the public, all the world knew it, that is all they know now, after Sir James Wallace has closed his evidence.

The whole of the evidence is to shew, that Mr. Bourne has given him the blow described by Mr. Farquhar, the Surgeon, and he has done

it just in the way any other gentleman would describe it.

Mr. Justice Buller. All you can try in this case is the assault.

Mr. Solicitor General. I believe my client will think himself hardly treated, if I was to set down; and only say Mr. Bourne did meet Sir James Wallace in the street, and so meeting him, he took a little cane, such as that gentleman has in his hand, near me, it is such as is now generally used, and he gave him a blow or two upon the head. He thinks it necessary you should know, and my lord should know, and the public should understand, that this was not an unprovoked, that this was not an insult, not any injurious conduct upon his part, but that upon the contrary, it was a mode of repelling that which he felt, and does feel, and till justice, and complete justice, is done between the parties by the sentence the court will pass when the affidavits come before them, stating the whole mutual conduct of these gentlemen to one another. He does feel that he has been one of the most injured, one of the most degraded men living, at least attempted to be degraded, but he feels something in his own mind, that tells him, that no man living can, with justice, sink him below the character of a man of honor and a gentleman; he feels that, and bears about him a consciousness, that in all his conduct between Sir James Wallace and himself, he has acted handsomely, honorably, right, and dutifully under his command; if he owed him subordination and obedience, he was at all times ready to pay, and did pay it, but he does think, that while under the command of Sir James Wallace, he does think no mortal man
in

in the profession, has been used with more barbarity, inhumanity, or more improperly, than he has suffered upon his part, as coming from Sir James Wallace that is his idea, he thinks so. I shall not go into the whole history, or into the detail of these kinds of things, which will certainly come before the court one time or other, in order to shew what he did, what he suffered, and that Sir James was treated with moderation and equity, that is what he thinks, he may be mistaken in so thinking, I don't mean to decide it, whether right or wrong, till the affidavits are heard, but only to express his feelings; I have read his account drawn with his own hand, and if true, and I know nothing to contradict it, his complaints to be sure are very well founded, his sufferings must have been extremely pungent, his passions seem compared with these kind of sufferings, to have been very moderate indeed. Now I will add another thing more to the purpose, Sir James Wallace, as my learned friend says, is an officer of great rank, and to name his name, is to make a panegyric upon him; I should be sorry to detract from the name of Sir James Wallace, or any part of his character whatsoever; I have heard very good things of him, and in his profession, I don't recollect I ever heard any thing of him that was not good, as to his merit of an officer, as a fighter, or commander, it does not come in question in this cause, nor relate to it in any part, he may have it all, I have no reason to think he has not, I hope he will enjoy the thanks of his countrymen, with all the reward his merit entitles him to receive. Mr. Bourne has furnished me with evidence, if material, which my lord will tell you is not material, and that would satisfy you abundantly

at

ta this hour, when you know the fact, and there is no doubt about the evidence of it, that he stands very high in the estimation of all his brother officers, they have voluntarily gone forth to bear the testimony to his honour, and the propriety and necessity of his conduct in this very instance of it that I have, and the resolutions of the whole corps of officers with whom he serves, I will not mention their names but just state the number of them, there is a testimonial of this very fact, stating it perfectly, understood with all this beating and battery you have now to decide upon, signed by general officers, six field officers, fifteen captains, and thirty-eight subalterns, stating the whole matter; not only returning thanks to him for his conduct, but the strongest approbation of it, and declaring it impossible, in his situation, to have acted otherwise than he did; I would not go away without mentioning it, for when my friends are gone from here, you will read it in the news-paper.

Mr. Justice Buller. Don't you be talking of news-papers, what has that to do with this; nothing.

Mr. Solicitor General. Nothing at all.

Mr. Justice Buller. Then it is talking to the news-papers.

Mr. Solicitor General. The very idea of a man being found guilty is a considerable degree of imputation upon a man. I desire it may be not understood by the gentlemen that try the cause, or any body that hears it, that ought more is decided by this, than Sir James Wallace was assaulted by Mr. Bourne, with or without any reason short of a complete justification, is not decided. It is not decided that my client is not completely

completely justified in giving the stroke, but the propriety, how much one man is degraded, as an officer or a gentleman, or the other has equally deserved it, neither is, nor can, nor ought to be decided in this cause. Having said so much, the gentleman behind me desires, I understand, I should call to you a witness, merely to state to you the circumstances of the assault, that is, that it was not that sudden, brutal, insolent, overbearing thing you would be apt to collect from the manner in which it has now been stated to you. I dare say there is some forgetfulness, in Sir James Wallace, of certain circumstances that repeatedly led to it, but my client conceiving himself injured, and from a long train of hard conduct, the detail of which is not material to go into, meeting Sir James Wallace, seeing him at some distance, a few yards, he said, this is Sir James Wallace, I will speak to him, upon which he made him a bow with great politeness and civility, began the conversation, and insisted that ill usage he had met with, and said Sir James must give him some kind of a satisfaction or apology, but Sir James thought proper to decline making that sort of apology for his conduct to him, or to give him that sort of explanation that would satisfy him, therefore Mr. Bourne thought it a duty he owed to the public, and estimation in the world, to treat him with that sort of contempt, which he certainly meant to treat Sir James with, by giving him that, which to men of estimation, rank, and situation in the world, is not very quietly, comfortably, nor pleasantly taken, that is, a blow on the head, saying this,

if

if you think of disgracing me, I shall treat you as you deserve. It was not in consequence of that contemptible, brutal, passionate expression, but Sir James positively refusing to do that, which Sir James, who knew all the circumstances, felt in justice and propriety he ought to do, Mr. Bourne then gave him this assault. I will call a witness to give you an account, not like the representation as the surgeon gave you, Mr. Farquhar, who was thought fit to be called upon this occasion. I think Sir James Wallace, this brave officer, as he is justly represented to be, though he has received a blow on the head, it certainly is not the black and the blue, the puffing and the swelling, that will have constituted the pungency of that blow, I should have thought not, therefore I should ask my learned friend, whether the black, and the blue, and the red, which seemed to be the most trifling ingredient in a cause like this, between such parties, can be material. However, it is their business to conduct their affairs in their own way, and that Sir James Wallace should seek for a remedy merely upon the extent of the injury done to the head, or the pain, or upon the question whether he was to be bled in three or four hours after, seems to be a singular way of putting it. I did think of calling a witness, but he may make an affidavit hereafter.

Mr. Bearcroft. After all this stating, though no witness is called, I hope your lordship will permit me to say a word.

Mr. Justice Buller. No; I shall not.

Mr.

Mr. Bearcroft. This black and blue, this puffing and swelling, belongs to my learned friend, not to my client.

The short-hand writer's note.

Mr. Justice Buller sent word to myself, and *Mr. Gurney*, who was engaged on the other side, not to write down his summing up*.

The Jury brought in their verdict, not guilty of the first count; but of the second and third counts, they find the defendant guilty of the assault.

* It is impossible to divine what motive induced the learned judge to suppress his summing up, but there is something very extraordinary in the order to the short-hand writer.

July 5, 1783.

THE KING
AGAINST
LIEUT. CHARLES BOURNE,
FOR AN ASSAULT.

MR. BOURNE being called up to receive judgment, Mr. Justice Buller read his report of the evidence given upon trial, which was to the following purport. This cause of the King against Charles Bourne, is an indictment upon several different counts.

The first count was for assaulting, striking and beating Sir James Wallace, with a large walking stick, with intent to kill and murder him.

The second count was for striking Sir James Wallace, and violently beating him, with a large walking-stick.

And there was another count, for a common assault.

The counsel for the prosecution said, they should not go upon the first count, therefore they waved that.

First, Sir James Wallace was called up, who said, on the 5th of February, as he was going to Mr. Drummond's, from the Admiralty, the defendant, near Buckingham-court, came up to him, with the words "You scoundrel, Sir James Wallace," that he had a cane in his hand, with a metal head, that he struck him, that he cut through his hat, that it stunned him, that the blow

blow was so violent, the hat was not only cut through, but the leather within-side; that he held up his arm, that the defendant laid on upon that; that as soon as he recovered a little, he struck at Bourne with a stick that he had in his hand, and they both continued striking till the mob parted them; that if the blow had been upon the temple, or middle of his head, he believed it would have killed him.

Upon his cross-examination he said, the defendant had complained of being ill-used by him, but that the matter had been coming to a hearing. He was asked if a court-martial had not been applied for, respecting the complaint Mr. Bourne had made, and answered that the time for the court-martial was elapsed*. He says he does not remember any thing that was said, but the words he mentioned before; he believes a clerk of the Admiralty was walking with him, whom he quitted; he says the stick was broke with the blows; that as to the court-martial, he himself had applied to the Admiralty for one, but they declined giving it, and said he ought to have come in the first instance†.

The next witness was a Mr. Weldon, an Attorney, he says he was returning from Westminster-hall, that as he came by the Admiralty gates, he saw a great bustle; that the parties were separated, and he crossed over to the Admiralty. That he asked the defendant who he had been beating. He said, that scoundrel or rascal Sir James Wallace.

The next was a Mr. Graswell, he says he heard a noise in the street, that he looked and saw the

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prosecutor

* See Mr. Adam's argument, where it is candidly acknowledged that the limited time for calling a court-martial was not elapsed, therefore it is natural to infer, that it was refused upon considering the merits of Sir James Wallace's complaint.

† See last note and Mr. Adam's argument.

prosecutor and prisoner fighting, Sir James Wallace had his arm extended, whilst the defendant was beating him about the arms and shoulders; that Sir James Wallace had no weapon; that he saw afterwards Sir James closed, and seemed to wrench the stick out of the defendant's hand, and defendant turned and walked away.

The next witness that was called was Dr. Farquhar, who says, that about seven in the evening, he saw Sir James Wallace, that he told him how he had got his drubbing, that he was then very feverish, and had a contusion over his head, it was quite black and blue, and that his arm was in the same state, and that he desired to be bled. The jury found the defendant guilty*.

Lord Mansfield. Are there any counsel upon either side?

Mr. Solicitor General. Yes, my lord, there are counsel on both sides. I am counsel for the defendant.

Mr. Bearcroft. They have filed affidavits for the defendant; if they have any thing to say in mitigation they may proceed now.

Mr. Solicitor General. We have not the smallest objection to offer what we have got to say to your lordship.

Mr. Bearcroft. My lord, I would suggest to the court, that the judgment of this cause was put off, on the application of the defendant, that both proceedings might come on at the same time.

Lord Mansfield. The matter of the libel will come when we have disposed of this; we will go on with this, as the judgment must be several and distinct.

Mr. Solicitor

* Guilty of the second and third counts for the assault.

Mr. Solicitor General. I conceived I was to attend your lordships this morning upon the whole of the case of lieutenant Bourne.

Lord Mansfield. We may hear them both together, but the judgments must be several.

Mr. Erskine. My lord, I moved your lordship that Mr. Bourne should not be brought up for judgment upon the libel, upon which he let judgment go by default, he not having then been tried for the assault. I moved specially he might not be brought up to receive judgment for the libel, as it is impossible to separate one case from the other; the court then, in great liberality, and great indulgence, allowed it to stand over. As your lordship says the judgments may be separate, but we cannot discuss them separate.

Lord Mansfield. Go on, and read the information and the libel.

After the information and libel was read, Mr. Solicitor General proceeded to argue for the defendant.

Please your lordships to favor me as counsel for the defendant, Mr. Bourne, who comes before the court for having published a paper which your lordships have heard read; and for being guilty of an assault upon Sir James Wallace, in which indictment your lordships will find, as the learned Judge has stated it, he was found guilty,

This crime is laid various ways. In the first instance, charging Mr. Bourne with an assault, with intent to kill and murder Sir James Wallace, which my learned friend abandoned in the opening, and of which the party was acquitted, and

and he stands now before the court convicted only of a *common assault*.

When I say a common assault, I don't mean to mislead the court in any of the circumstances that shall come before your lordships upon the affidavits upon either side.

It was an assault given by a gentleman in a military situation and rank.

Sir James Wallace was of the same profession in a naval station, and under whose discipline and command it is very certain Mr. Bourne has been.

In my present situation, both in respect to the libel and assault, it is not competent to me to state that Mr. Bourne is a person innocent before the court—certainly not; it is however competent to me to mention such circumstances as have formed an exceedingly difficult and delicate situation—Perhaps the most delicate and difficult that can occur within the compass of the human mind; that is, where the circumstances are such as to create a conflict between that duty which a man feels he owes to *himself*, and that duty which he owes as a *subject* to the *law* of his country.

My lords, in the latter situation I must submit that Mr. Bourne has offended; because, my lords, the most insulting language, the bitterest expressions—any species of the most opprobrious, insult, certainly is not a *justification* in a court of law for an assault.

My lords, when I think of this law, and think of the cases to which it has been applied, and to which it must be applied by your lordships sitting here, I cannot help exclaiming with the young man in the scripture, "It is a hard saying, who can bear it?" The law is so, and by the laws
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of this country, this gentleman stands before your lordships to be judged.

My lords, this gentleman is represented to me as a young man very hopeful in his profession, much respected and honoured, and never more respected and honoured than at this moment; his friends, by whom I know the most ample testimony is given, even after all that he has done, adding to it only all that he has suffered, even at this moment, no man is more beloved, honoured, and respected by his corps—I have seen the most ample testimony of their opinion of the propriety of his conduct even in this instance, which the law condemns.

My lords, he comes to have his case decided upon by persons, whom however accurate may be their knowledge of the laws, the strict principles, and the necessity of their application, they are persons who have commerce with the world, whose minds are stored with every liberal and every ingenuous sentiment, who know what is in man, and who would not expect a man whose life is honoured, and whose very being depends upon his spirit, to be so abject in his mind, as to suffer himself to be degraded throughout the world, without shewing a spirit of resentment.

Mr. Bourne had the fortune, the *misfortune*, as it seems, now, to be under the command of Sir James Wallace, who was the Captain of, I think, a ship called the Warrior, that went abroad during the course of last war to the island of Jamaica.

It was upon that service, and upon that occasion, the seed of all this mischief was sown.

My lords, I will not go minutely into all the circumstances of this case, as they are told in the affidavits, your lordships will have them read, but my

my lord, they contain such a history of the conduct of Sir James Wallace; that I had much rather your lordship should take it from the oath of witnesses, than from the stating of any advocate.

I know nothing of Sir James Wallace—I am sure I don't mean to traduce him, he may be a man of eminent character, merit, and virtue, and there may be nothing exceptionable in his whole conduct, for what I know, except what may be imputed to him respecting Mr. Bourne—But, my lord, if this story is not all fiction and invention, there never was a superior officer that ever so conducted himself to any person of the port and figure of a gentleman—bred in an honourable profession, and not permitted, from the very duty of that station, to provoke him.

Unmerited and unprovoked your lordship will find the conduct of Sir James Wallace to be thus—assaulting Mr. Bourne with every menacing look, with every indecent expression, and with every threatening gesture, he came holding his clenched fist before him, running it from time to time in his face, as it were, and commanding him for no offence, that this gentleman knows, and for no offence, that I can find any body can state, commanding him never to walk upon the side of the quarter-deck of the ship upon which he was walking; that was his order—“ You are never to do it, and do you dare dispute my orders ?”

It was his duty in that station to obey, and not to mutiny; but I am told by those who are the best judges of it, that this conduct was such a degradation, and such an insult, that if Mr. Bourne patiently and quietly submitted to it, it was enough to ruin his character as an officer.

Yours

Your lordships know by the etiquette of this profession it is so—perhaps the insult offered might appear small in the estimate of a porter, or low man, but it is ten thousand times worse than death to a man of honor; your lordship knows that a man of honor is not more disgraced in his character, his fame, or his memory, by having his head cut off, or being set in the pillory, than by being thus disgraced—Your lordships know an instance I believe of a great prince once caning a general officer, which disgraced him, under the idea that that was a sort of insult to a military man.

That conduct, which I understand first of all began upon the part of Sir James Wallace against Mr. Bourne, is infinitely worse than any thing that could possibly be done by a severer punishment. Your lordship, I am told, will find this sort of conduct existed time after time, day after day, week after week, during the whole of the voyage; your lordship will have the history of Mr. Bourne's remonstrances upon the subject, and his inability to produce an explanation, apology, or any sort of satisfaction, till he came to England.

I cannot defend this subject of duelling as a moralist, much less as a lawyer;—I know I cannot; at the same time I know it is the concurrent opinion of all that have most attended to this subject in Europe, that it is not possible to prevent the existence of it in certain cases—it cannot be done. I know very well a great prince (which your lordships will recollect) the present king of Prussia, said it was a subject worthy of all the powers in Europe to hold a congress upon, to see
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if they could prevent a custom which spills the best blood in the world. It cannot be done—I doubt whether it ought to be wished it were done, and whether its abolition would not produce more disorder more outrage, or affront, and whether it would not produce intolerable mischief if it was prevented. But it cannot be done; your lordships I am sure will go along with me in thinking, and your lordships own experience knows instances of it, that it is as impossible for a person of rank in the army or out of it, if they have been in the army, to bear an affront degrading to his honor, and consequently inconsistent with all his future hopes and expectations, as it is for a wise man to commit suicide or any other crime.

It is now for your lordships to consider Mr. Bourne's conduct upon the whole of this case. Your lordships will see whether Sir James Wallace's conduct justified it, and whether he did not deserve some explanation and apology from Sir James Wallace, or that Mr. Bourne was undone.

Your lordships will observe too, that the fact preparatory to the libel of which Sir J. Wallace complains, was an insinuation against Mr. Bourne in a point that if he consented to admit that insinuation as true there was an utter end of him; for, my lord, Sir James Wallace, by a publication of a letter with his name set to it, which I am going to read to your lordship, was that which provoked Mr. Bourne to answer it, it is in the Morning Herald of the 22d or 23d of December, 1782, there appears this paragraph, or reference, signed J. Wallace.

“ Mr.

" Mr. Editor,

" UPON my arrival in town yesterday, I was informed a publication had appeared in your paper of Monday last, casting very pointed, scandalous aspersions on my character, of which, from some late transactions, I suppose Lieut. Bourne of the marines to be the author; the whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a newspaper publication, I shall therefore only say, that he has never *once come to the point*, either at Jamaica, Bath, or London, and if he had, I can demonstrate that I was prepared for him at each place, and might have prevented all his vain boastings and false assertions.

Dec. 20th, 1782.

JA. WALLACE."

Your lordship sees by this paper that it refers to a supposed prior publication; that prior publication I have an affidavit of Mr. Bourne declaring he never wrote it; that he never published it; that he never knew of it; and, in truth, he is perfectly as innocent of it as your lordship; to whom I am speaking.

Then your lordship sees what sort of a provocation this is upon the part of Sir James Wallace, who begins the libel as between him and Mr. Bourne.

Your lordship cannot read this paper, nor will my friend deliver his sentiments and criticisms upon it, as if this was not a direct charge of cowardice upon Mr. Bourne, his good sense will disdain it; I think when Sir James says Bourne never came to the point, either at Jamaica, Bath, or London, and if he had I was prepared for him at each place that admits of no other interpretation but this, Mr. Bourne has abused me in the newspapers—

that is the road he chuses to proceed in—had he chose to attack me as a gentleman I was ready at Jamaica, Bath, or London; but he is a coward, and a mean dastardly fellow, he never durst come to the point with me any where, therefore I will post him as a liar and vain boaster, who is capable of false assertions. This is the language of this paper.

My lord, this is the first beginning of the libel. I don't say in point of law this publication is a justification before your lordship of Mr. Bourne hitting Sir James with a stick, but if Sir James Wallace, or any man alive, had admitted himself the publisher of such a libel upon a man of honor, and that man had knocked him down never to rise again, I am persuaded there is not a man of honor or spirit in the kingdom would have blamed him.

I don't mean to say your lordship must not consider it an assault, that the law of England will not justify him in; but such indulgence the law will give at least in the administration of it to the infirmities, and more to the generous feelings and sentiments of a man, without having which he don't deserve to live and breathe in common air, that it is impossible for any man alive to think the worse of him for what he has done.

Now I will ask your lordship, suppose Mr. Bourne had submitted to this, an officer, a soldier, a man living in his profession, and hoping to rise by it, and he had passed it by—that Sir James Wallace says to all the world—this man talks of Bath, and of his prowess, he never dared come to the point with me—I was always ready for him, and I chuse to publish it to the world—does not your lordship know that no one
officer

officer could have ranked with him, and he must have been drummed out of the corps instantly, and never have been spoke to afterwards—it could not have been avoided.

Then, after this, Mr. Bourne writes a letter, strong, passionate, intemperate, and just the same as any man, whose mind was boiling with resentment; and he could not do otherwise, if he had the feelings of a man excited by Sir James Wallace's publication, which was the most inveterate, and the most keen and pungent that could possibly be to a man of honor; then he writes that which the law reprobates—in my apprehension, it is that which any man in his situation would have done.

Whether I should have done it or not I don't pretend to say, but this I know, that if I had not done it I should be blamed for ever; I could never go into society but I should think that I saw in the countenance of every man I met my condemnation and confusion—I should so have felt.

So it seems Mr. Bourne thought before he struck Sir James Wallace, and committed this assault. I don't mean to say that he can be at all justified in this court for it; as to the stripes he gave Sir James Wallace, whether they were with a great stick or a little one, or whether it was like a bruising match among porters, which it certainly was not, it is a very different case.

Now your lordship must consider what situation he is in; with respect to this, your lordship will find in the history referable to it, Sir James Wallace was constantly causing, and necessarily exciting him to a conduct like this unfortunate and unhappy as it is—it could not be otherwise—I hope I have shewn—your lordship I am sure must feel

feel he was called upon to take some earnest, ardent, and vigorous means to rid his character of a blot that would totally overthrow it with obscurity for ever if he did not do this: he appeals to him from time to time, and asks for an explanation of his conduct; at Bath I think your lordship will find that when he asked for an explanation, Sir James Wallace sent him word that he had ladies with him; after that he met him in the street, and he tells him it is extremely strange he will not come to an explanation with him—Sir James Wallace pulls out a pistol from his pocket and cocks it, and says, if you speak to me I will blow your brains out immediately; Mr Bourne says, this is not the way among gentlemen, and desired he would meet him in a proper way, according to the laws of people of honor—nothing of that sort was done.

After that endeavour, which made a great noise in the profession, to explain it in the way in which these gentlemen alone would think proper to explain things, these publications are delivered to the world, their minds were agitated upon the subject, the friends of Sir James Wallace taking his part, and the friends of Mr. Bourne taking his part.

Mr. Bourne casually meets Sir James Wallace in the street, and it appeared upon the trial, that Mr. Bourne accosted him with some decency, walked with him a few paces, and in that walk some conversation passed, such as your lordship would expect. Sir James Wallace was at some distance, they met just preparatory to the assault, he treated him with neglect and contempt in the same manner he did upon the trial, as I very well remember; upon which Mr. Bourne, feeling that he

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was in that state, reprobated by Sir James Wallace to all mankind as a coward, he thought there was no way in the world but to insult Sir James Wallace, and to declare to all the world, I must either die, or I must live with some credit; I must have an open, unequivocal, public explicit declaration, for so the world will take this fact; I will in truth insult this gentleman by striking him, for he will not deliver me from the imputation of being a coward, but by my doing an act which must, in its nature, necessarily bring my courage, honor, or spirit to the test.

My lord, I know very well this way of putting the case will naturally open to consequences of which I am not at all afraid, though I know your lordships will say this tends to the greatest violation and breach of the peace.

Court. This gentleman is indicted for a common assault—you make it a great deal worse by the opening.*

Mr. Solicitor General. My lord, I cannot state to your lordship Mr. Bourne's cause without stating it fully, I cannot state one half and suppress the other half, he would not wish one tittle of it to be suppressed, for sorry as I know he is—very sorry—extremely sorry that it should happen, he should be obliged to put himself in a predicament to offend the laws of his country; to offend which I believe he is as much unwilling as any man upon earth, yet he does consider, and your lordship must I am sure allow, he cannot but consider the sentiment of honor, so invincible and so absolutely insuperable from him, that he must be a man of honour, let him suffer ever so much, he must live with a view to noble ends, and to prosecute those ends by these means, or he cannot live at all. That

* The language of the court, previous to sentence, shews however that he was not punished for a common assault.

That is his case—he struck Sir James Wallace and Sir James Wallace appeals to the laws of his country, and has brought him to this place; I don't blame him for it, Sir James Wallace was judge for himself; that Sir James Wallace has judged erroneously I am sure I don't care to insinuate—he is the best judge of his own propriety of acting; but at the same time he must permit my client to judge of his.

Every body knows the fact of his having struck Sir James Wallace—of his having been indicted, tried, and convicted for it; all this every man in the kingdom knows, and yet, with a knowledge of all these facts, I have the unanimous judgment of his corps, signed by all the volunteers, upon the subject, of fifteen or sixteen general officers, expressing I believe their great respect of the character of this gentleman; I don't mean that they have expressed their approbation of any violation of the laws of their country, or any thing like it—nothing of that sort, but expressing their great love, attachment, and regard for this gentleman, as a man of honor, who, if he has been betrayed into a violation of the laws of his country, has been betrayed into it by the sentiments of honor.

This is the case that will be proved by affidavits—I will not trouble your lordship any longer for this reason, I shall be followed in this case, which is very momentous to my client, by a learned friend of mine, who feels more accurately than I do upon all subjects, who I am sure will express himself with much more pathos upon the subject, he having been an ornament to his country in both capacities, belonging to the corps of Sir James Wallace and Mr. Bourne,
though

though it is now come to his turn to adorn another profession; he is capable of speaking with more accuracy and force, and I do a great deal of injustice to Mr. Bourne to detain your lordship and the court any longer upon it.

The affidavit of Mr. Bourne read, near the conclusion of which Lord Mansfield asked Mr. Erskine if he had seen the affidavits before they were filed.

Mr. Erskine. Yes, my lord, Mr. Solicitor General and myself have both seen them.

The affidavit of George Paris Monke, Esq. read.

The affidavit of Augustus Markett, Esq. third Lieutenant of the Warrior, read.

The affidavit of Charles Green, Esq. Captain of Marines, read.

Lord Mansfield. Is it certain that you have read these affidavits.

Mr. Erskine. Yes, my lord.

Lord Mansfield. How can they dare to make an affidavit in this court giving an opinion upon the subject.

Affidavit of John Webber, Esq. Captain of marines, read

Lord Mansfield. How can he dare make an affidavit to tell the court his opinion upon it—it is impossible you can ever have read these affidavits—it is an insult upon the court.

The affidavits of Lawrence Desborough and James Hamilton, Esqrs. Captains of Marines, read.

Affidavit of the Earl of Cork was then called for.

Lord Mansfield. Now we are to have the Earl of Cork's opinion.

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The affidavit of James Smith Bar, printer of the Morning Herald, to prove Sir James Wallace's letter, as signed by him, was inserted in the Morning Herald.

Affidavit of Arthur Collins, Esq. Major General of Marines at Plymouth, read.

Affidavit of James Hawker, Esq. Captain of the Iris, read.

Affidavit of ——— Bouchier, Captain of the Le Hector, read.

Mr. Erskine. I have the honor, my lord, to be of counsel for Lieutenant Bourne, who now stands before your lordship for judgment; and my lord, under all the circumstances of the case, as it is closed by the affidavits which have been read, however improper they may be in some parts, which I shall speak to bye and bye, my principle hope of a mild sentence is built upon the persuasion that still more will be secretly felt by the court than may decently be expressed from the bar, for although I am convinced your lordships have all those nice sensations which distinguish men of honor from the vulgar, and your genuine feelings for the defendant must be rather feelings of compassion, and approbation than resentment, yet you cannot, sitting upon that bench, clothed with the robes of magistracy use the same language as I could freely insure from your lordships for my client, in any other place than this.

Unfortunate for this gentleman who has this case depending before your lordships in this court, where your lordships are bound, as judges of the law, to consider that as a crime in him against the society in which he lives; which if he had not committed, that very society would have expelled him like a wretch from all communion; and you must speak to him in words of reproach

approach and reprobation for doing that, which if he had not done, your lordships would have scorned to have spoke to him as a private man.

This is a harsh and a singular situation—in other cases, my lord, where a subject, in disobedience of the laws, becomes an assertor of his own rights, or the avenger of his own wrongs, he can have no possible plea of mitigation—he can have no answer to make when he is told by the judge who punishes him, Sir, the law which you have broken would have protected you in obedience to it; the law would have restored to you that property which you have yourself retaken by force. But, in this case, as my learned friend, the Solicitor General, has stated, so very whimsically is our society constituted, that your lordships cannot by your judgments protect men in their obedience to that law for the breach of which you punish them.

I say your lordship cannot afford this protection, because you cannot grant an attachment against public opinion, or insure to a man he shall not be excluded from society, or what is as bad, forfeit his respect and estimation only for making the law of society the rule of his conduct, as that is a fatal error in the constitution of community, but it exists in our own; surely that law which composes the universal voice of community ought rather to be abrogated as erroneous in principle, or be enforced by such regulations as exclude the possibility of its being thought honourable to disobey.

But I beg leave to say, this dishonourable purpose cannot justly be maintained by the conviction of parties, or the punishment of a few, till by wise laws a general change in the minds of men can be effected upon the subject of duelling. I think with my worthy friend, who spoke before

me; that the practice of private duelling, and all that sort of behaviour that leads to it, is a high offence against the laws of God; and I agree with that great prince, who mentioned it as destructive of good government amongst men, a practice generally unknown to the most refined and heroic people, till the revolution of times and manners introduced it into the world, a practice through which a most amiable man may be lost, by an ignominious death, or the stroke of mere blind chance.

Though I feel all this as a christian, and humane man ought to feel, yet I am not ashamed to acknowledge, that I had rather be pilloried in every square in London, than obey that law, when the public, universal voice was in the other scale. Every man that hears me, feels what it must be, to exist without the respect and good opinion of the world which we live in. No matter what principle it is built upon. Life itself is worse than any thing the laws can inflict; the closest dungeon to which a tyrant's severity can send an offender, is better, with the secret approbation of those that sent him there, than liberty, with the rage, contempt, and scorn of the universe.

In the little I have to say, and it is not much, my single aim must be to convince your lordships, that the defendant was placed by the prosecutor, in a situation that left him no alternative, between personal disgrace and infamy, and a personal breach of the law, of which humbly he acknowledges himself guilty.

The generous feelings of a man of honour, jealous of his reputation, animated all his intercourse with Sir James Wallace, and I beg leave to say, no one of those feelings has he violated, beyond those rules of military subordination
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which bound him. The municipal laws of the kingdom, are the laws binding upon soldiers.

My lord, the character of the defendant is stated to your lordship by these affidavits, and in many more behind, which were not read; whether they are the most material in this case for Sir James Wallace is not for me to dispute. His character has been justly and honorably acquired in the service of his country. And as lieutenant Bourne, appears here before your lordship, as an obscure man and unknown, and Sir James Wallace, a man well known by the services he has done his country; it is easy to see, in the minds of men, how the balance would turn, therefore we thought it our duty to file the affidavits of those officers with whom he served, and under whom he served; they all give an account of his character, his behaviour, and accurate diligence of his conduct, which are sufficient to lead your lordships to think, he would not, unprovoked, have been guilty of that, which must have been a breach of discipline in this case.

Your lordship has heard two affidavits, which make him an object for the compassion of the court. The man that has behaved nobly must not be punished, unless there is an absolute necessity for it.

Lieutenant Markett saw this Mr. Bourne, this gentleman that would not come to the point, saw him in the action with the French fleet, upon the 12th of April, quartered in a part of the ship, the most exposed to the fire of the enemy, and he acquitted himself, with that noble and spirited execution of his duty, as justly increased the ardour of the men, and made him the just admiration of all the officers on board.

Lieutenant Middleton swears, that in all the calamities of Le Hector's unfortunate voyage from
Jamaica,

Jamaica, "in a long and desperate action, with two French men of war, during which, as well as in a succeeding scene of sickness, thirst, and hunger, in a sinking ship, a considerable distance from any land, and precluded from any prospect of deliverance, his cool and unabated intrepidity inspired courage in every person around." He shewed a most spirited conduct, and a manly resolution. He contributed to the preservation of all, by encouraging their perseverance.

A man in the possession of such a character as this, would suffer no man to tread upon him unjustly. Character is the great and sacred pledge which God has given to every man that deserves it, and he deserves every sort of reproach and disgrace, who parts with it for a light cause.

The prosecutor and his counsel, that heard the affidavits read, and heard the panegyric upon Mr. Bourne may impute it to ostentation and vain glory; I desire them to remember, that modesty, indeed, represents good actions, upon a principle far better, where the approbation of others is blended with it; that principle does not apply to cases where character is traduced by slander, and held forth as dishonourable.

With this character, justly acquired, in the manner I have stated to your lordships, lieutenant Bourne came on board Sir James Wallace's ship, anxious to serve his king and country, in very perilous times, and feeling he could serve them, because he had that within him, which told him he was worthy of the place in which he stood.

My lord, I have seen but one part of the prosecutor's affidavit, and I cast my eye accidentally upon it this morning, and the first charge we make in our affidavit upon the prosecutor is this.

That he gave out an order, as captain of the Warrior, confining this gentleman, Mr. Bourne, individually,

individually, to one side of the quarter-deck; not a general order that Sir James Wallace chose one part of the deck to himself, but an order, proscribing lieutenant Bourne by name, telling him, as if his presence was a contagion and contamination, no longer to walk on that side of the deck on which he, the captain, was.

Sir James Wallace has set forth in his affidavit, that it is a part of the discipline of the navy, the captain has a right to make such orders; undoubtedly he has, and may order every officer, whose duty it is to walk upon the quarter-deck, to go to the top of the highest mast in the ship, but he cannot do that without a cause, and subjecting himself to a trial by a court martial, and the infamy that belongs to such conduct*. I had the honor, not as my learned friend stated to the court, as any ornament, but I had the honor to serve in the navy, under a man who is an ornament to his country; a gentleman the most accomplished this world can produce; a man who has the honor of being nearly allied to your lordship. I sailed with that man, and there I learned what ideas ought to be entertained in a ship. Every respect a man can pay to his neighbour, that gentleman always paid to me, and though I was placed on board that ship, and taught to reverence him of as my father, and do to this hour when I speak of him, yet, I feel, if he had treated me in this manner, that Sir James Wallace has treated Mr. Bourne, I would have sought him through all created space till he had given me satisfaction. It is impossible in the nature of that man to suppose I could exist without doing so.

I am sure Sir James Wallace could bring no man that valued his reputation to say an officer
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* See note, Appendix, page 30.

is to be proscribed, and that not by a general order for all the officers in the ship, but a special order against a particular man, by name, without a cause being stated for it.

My lord, if lieutenant Bourne had submitted to that, he could not have walked upon the side of any ship, he could have spoke to no man whatsoever, in the capacity of an officer, his existence as an officer, and his occupation was gone. Is this all the insult that Sir James Wallace gave him there? Is it not sworn by the defendant Bourne? Is it not sworn by lieutenant Monke, who stands without reproach upon his character, as a naval officer, in the same ship? Was not he present when Sir Sir James Wallace came out of his cabin, with his eyes starting fire, clenching his fists with terms of reproach, in the teeth of the gentleman before your lordship*.

My lord, putting the infirmities of human nature out of the question, which are so strong I profess I almost forget myself when I am stating them here, what must that man have felt, and what does he deserve of your lordship, for his conduct upon that occasion? What I mean to shew your lordship is, that this gentleman has been guilty of a common assault, and not of any thing improper in the navy. Lieutenant Bourne's behaviour upon this occasion, has been all humility and meekness. Sir James Wallace could have no justification for his conduct. I will venture to say, it is impossible he can offer to your lordship any reason for that conduct. If lieutenant Bourne had insulted him as a private man, surely it was not very manly, or consistent with that character Sir James Wallace has so justly obtained

* See lieutenant Monke's affidavit, Appendix, page 9.

obtained in the world, to resent it as he has done. The defendant could not, without mutiny and death, have disputed his captain's orders. If the defendant had committed any breaches of discipline in the ship, were not the laws of the navy open to Sir James Wallace for redress, Mr. Bourne was ready to submit to those laws, and during a long and painful voyage, he bore all the dreadful treatment I have stated to your lordship. If Mr. Bourne, upon the arrival of the ship at Jamaica, had done what the affidavits have stated him, at a subsequent time to have done, I should not have been the first to defend him. He appeals to the admiral, stating the conduct of Sir James Wallace on board his ship, and requires a court-martial upon himself, conceiving Sir James Wallace thought him guilty of some breach of discipline on board the ship, therefore he calls upon the admiral, the commander of the fleet, to bring him to a fair and regular trial. If he had done any thing in the character of an inferior officer, for which the law could have punished him, he would not have called for a court-martial.

Instead of that redress which he was intitled to, he was removed by the admiral into another ship, he was no longer then the immediate subordinate of Sir James Wallace.

I am sure it would be indecent to speak in justification, or in mitigation of that part of his conduct, which is not before the court, now it cannot be said the subordination of service extends to such a matter as this, much less when a man is removed from under immediate command of his officer; he is no longer on board a ship, but meets Sir James Wallace on shore. He is not now before the court, for a breach of the peace at Jamaica, and I may say he demanded there, that satisfaction

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which

which the custom of the world however erroneous, thinks he had a right to demand of another. His temper could not be collected upon that occasion, and he tells him, that he required that satisfaction of him; Sir James Wallace, in his affidavit, swears he told him, he should hear from him, my lord, he did not hear from him, but he heard from many others, what Sir James was constantly communicating, that lieutenant Bourne was a base, unworthy scoundrel, not fit to live in this world, that he heard from every mouth, and in no company did he go, at Jamaica, nor at Newfoundland, but he found himself the object of that reproach and slander, which Sir James had spread upon him.

There are some injuries which Christianity does not call upon men to forgive or forget, for God has not laid down that human nature is capable of doing it.

He sought Sir James, not to stab him, not to pistol him, but that he might explain his conduct, that if it admitted an apology he he might give it, if not, that it should be settled according to the laws of honor, which I hope your lordship will forgive me for the indelicacy of alluding to, in such a court as this. At Bath he sends, to Sir James Wallace, a message without a name, the excuse is, that Sir James Wallace had ladies with him; Mr. Bourne did not choose to insult the ladies, or to do any thing by which the matter might become more known, but when he found Sir James Wallace would not explain his conduct by a message, without fighting, he wrote first that note, in which he told Sir James Wallace, if he persisted in not seeing him, it would only confirm him in that opinion which he had, of the dishonourable character

character that related to him. The answer was very well ; he writes another letter of the same sort, the answer was, very well.

My lord, lieutenant Bourne had done enough, and if Sir James Wallace had been silent upon that occasion, or thought fit to make the discipline of the ship his defence, I am afraid I should have no sort of plea of mitigation here. But he went round slandering the character of Mr. Bourne, upon which Mr. Bourne saw he had no redress, but to take an opportunity of meeting him, and insist upon an explanation. He met him in the streets of Bath, not to strike him, but accost him, as one gentleman accosts another, by desiring an explanation of his conduct; Sir James Wallace answers him with a pistol; he claps a pistol to his breast—the defendant is not the man that breaks the peace—the defendant's reply is for God's sake, Sir, do you think this is the place for producing pistols—that should be in a more private place, I only come for an explanation.

Sir James Wallace leaves Bath, and now I come to that which I think requires the attention of the court.

Mr. Bourne, but for this letter, which appeared in the news-papers, signed James Wallace, had most undoubtedly vindicated his honor, and if he had gone further than that, I protest I should have thought he was an object of reproach. He had done enough when he insisted upon Sir James's coming to the point, he met him, and the consequence of the meeting was, he resisted him by a pistol.

Sir James Wallace, in consequence of what passed at Bath, writes this letter, which the Solicitor General read in court*. This part is remarkable; he says, first of all, lieutenant Bourne

* See copy of the letter, Appendix, p. 7, and 16.

is the author of the anonymous paragraph, but he does not send to lieutenant Bourne, to know whether he is the author of it; he does not take pains to collect evidence that he was the author, but presumes it at once, because he knows in his conscience, there was great reason for Mr. Bourne writing such a paragraph, and therefore he sets down to write this letter, in answer to an anonymous paragraph, and he thinks fit to fix on Mr. Bourne. In this letter, Sir James Wallace says, "I shall only say, he has never once come to the point, either at Jamaica, Bath, or London, and if he had, I would have demonstrated, I was prepared for him at each place, and would have prevented his vain-boasting." If that is truth, there is an end of the defence. If Sir James Wallace had said, I think it necessary to inform the public, that lieutenant Bourne, an officer in my ship, conducted himself with indecency to me, in violation of those rules of subordination and discipline, I, as an officer, held sacred, I feel myself brave enough to refuse to meet him; I think my character is sufficient to vindicate me, in any matters that relate to the discipline of the navy. There would have been an end of Mr. Bourne that is, if Sir James Wallace could have said that with truth. He does not say that Mr. Bourne was pursuing him without an adequate cause of quarrel. He does not say, that Mr. Bourne offended against discipline, and then, keeping up to that, he had thought fit to quarrel, and follow him to Bath. He does not do that, which is a complete defence, but on the contrary, he seems to admit an expectation, that lieutenant Bourne would call on him, and he throws the ball back to him by the defiance

fiance of the challenge, and says, I was always prepared to meet him, but he would never come to the point, either at Jamaica, Bath, or here. He makes no plea of discipline, and surely my lord, if in Sir James Wallace's mind, he had thought the only defence was in consequence of the discipline of the ship, what can your lordship suppose he would not have not held forth to the public? What can be better evidence to the world, when he called the public to give judgement upon the quarrel between them?

This letter is called a libel, let me put this in the case of a civil action. Mr. Bourne's answer is one of the most measured answers I can possibly conceive, not to make use of any one opprobrious epithet to Sir James Wallace, every thing that is said to be opprobrious, is only stated facts to the public, whom Sir James Wallace thought fit to make the judges. He sat down merely to write what passed; if he was to answer the letter at all, he must answer it truly; if he wrote those private reproachful letters to Sir James Wallace, they were wrote in private, and never meant to be public, and Sir James Wallace publishing false letters, and false accounts, induces him to write those public letters.

These letters, however libellous they might be, were never intended for the eye of the public. Mr. Bourne writes in answer to a letter signed James Wallace. If it had not been his, Sir James Wallace might have sent him word, that it was not inserted by him, or his order. Sir James Wallace is conscious such a letter might be expected, as appeared first anonymous, therefore he thinks Mr. Bourne was the author, when he was not the author.

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My lord, if a man will make a private quarrel the object of public attention, and he mistakes the author of that public quarrel, I put it to the feelings of every man, what is it possible for a man to do, but to give a fair representation.

If that representation, when it comes out, appears contumelious, so as to make a libel, if not originally intended for the public, it is no libel, because not intended for the public. I do not say it would not be a libel upon an indictment, but unquestionably it would be no libel upon a civil action.

Mr. Brand, the surgeon, brought an action against S , for a libel, your lordship desired him to make out an answer, and it was found that letter contained a libel upon S

it was a justification, and he was entitled to a verdict; for though it might be a violation of the public peace, no man is entitled, as an individual, to damages, where he provoked the injury.

Sir James Wallace is as much out of the question as if he had no existence, and when your lordship looks at this letter, your lordship will see what punishment a man deserves, who merely violates the public peace, by communicating to the public by letter, that which he had no occasion to do, if not forced to it.

Mr. Bourne writes to this effect, I find myself under the necessity to trouble the public in the vindication of my honour. And that I do really believe is the foundation of all this gentleman's proceedings—Upon my arrival in England, I was informed Sir James Wallace was at Bath.

I wrote him the following notes,

I shall not read those notes, it is not pleasant to read any thing that conveys a reproach on another,

ther, but in mitigation of this gentleman's punishment, I beg your lordship to consider, he was called out to public view by Sir James Wallace himself, and he was only repeating to the public, that which he could not possibly get off from, though it was a libel. He must have written the whole truth or nothing.

Need I say it in court, his character was utterly undone and lost, for if that paper of Sir James Wallace, with all his reputation to give it weight, had stood without an answer from Mr. Bourne, my lord, no officer that knows him, would ever have known him more.

Under these circumstances, I think the libel is mitigated to such a degree, as that the defendant can have little to apprehend from the judgment of the court.

With respect to the assault, it appears by this very letter, I beg your lordship to attend to that. I am sorry to state a breach of the peace by way of mitigation, it is very awkward. It appears Sir James Wallace had refused to answer him as a gentleman, yet in a few day after this, Sir James Wallace, without challenging him, or calling him to an account, says, this gentleman would never once come to the point. What was the defendant to do, says he, I have done every thing I could to bring this gentleman to the point; I have held my cane within five inches of his temple, yet he swears that in every company he went into in London, he found Sir James Wallace still propagating that Mr. Bourne was a coward, and never would give him that satisfaction his honor required.

Mr. Bourne was defending himself against that libel, and he was walking with this gentleman who

who sits by me, and whose affidavit is filed*. He had no weapon at all in his hands, Mr. Bourne swears, and Mr. Coombe confirms him in that oath, he had not any cane, or switch, or stick; seeing Sir James Wallace come up, he took the cane out of Mr. Coomb's hand, a small cane, with a white head, and goes up to Sir James Wallace, not like that assassin the indictment would represent, he comes up to Sir James, and accosts him with much more civility than I should, but he did that from the most honorable motives; he said, Sir James, I now desire you will justify your conduct.

Lord Mansfield. I doubt you are mistaken, that is not according to the report.

Mr. Erskine. I have read Mr. Coombe's affidavit, and your lordship may be assured I am not mistaken in this, Mr Coombe positively swears, and I beg leave further to say, during the trial of the cause, we offered Mr. Coombe as a witness, and Mr. Justice Buller very truly said, his evidence would come in mitigation, though it could not alter the verdict, therefore he ordered us to file affidavits. Bourne takes the stick out of Coombe's hand, and said, there is Sir James Wallace, he went up to him with all that sense of injured honor which he had, and said, now, Sir, I insist upon your coming to an explanation. Mr. Coombe did not hear the conversation between them, but he positively swears there was a minute's conversation passed, and that extraordinary conversation was the most perfect civility. That Mr. Bourne positively swears, that Sir James treated him with the same contempt, and held him at arm's length as he did before.

Now I will plead for the infirmity of human nature once more. Consider what the honor of an

* Mr. Coombe, See his affidavit, Appendix, p. 240

an officer is, and if their honor is lost, it is their universal ruin—consider what punishment a man deserves when he knew the person accosting him had been injured by him, and yet refused him satisfaction forty times, but had held him forth in the news-papers, as a person that would never come to the point—then the defendant struck him, and it was not till then Sir James Wallace returned the blow.

My lord, you have before you a young military man, jealous as he ought to be of his fame and honor, treated with the greatest indignity by his superior officer, smothering that honest resentment, so long as he was under his superior officer's command, and the duty of the military service required that painful task; and though he proceeds in criminal opposition to the law, but with that I will venture to say even here, it was through the generous infirmity in his nature that was cherished by a long established, though erroneous custom; but Sir J. Wallace holds him forth as not being a man of honor, and by a public letter in the news-papers, asserts, that he was always ready to come to the point, if Mr. Bourne would come to the point with him; was not that a defiance and a challenge.—The defendant was stung to the soul with the matter that he knew would ruin his fame for ever, and Sir James Wallace, having, by the channel of the common news-papers appealed to the public—he appeals in answer to that tribunal Sir James Wallace thought fit to apply to—the answer is without reproach—it is nothing but a fair, clear, and true representation of those circumstances which the prosecutor had misrepresented.

Sir James Wallace instead of replying to that answer before the multitude, indicts the defendant as a libeller in this court, for not having patiently submitted to that eternal disgrace which must have fallen upon his name to all posterity, if he had submitted to that publication unanswered.

He had shaken his cane over Sir James Wallace's head at Bath, yet here Sir James holds him forth as a coward, who would never come to the point.

Still Sir James Wallace refuses him all access to his person, by which he could come to it, or any explanation could be obtained.

My lord, I am not speaking in justification—There was but one step more to put his reputation, which is a jewel to every man, much more of a soldier, out of the reach of that slander the prosecutor had raised upon him, and which he had been so long the object of, namely, by fixing that disgrace upon him which the blow of a gentleman has ever been thought to carry with it, it surely renders the person that received it liable to every disgrace, as the prosecutor in this case had said his adversary would not come to the point.

For that act Mr. Bourne thinks there is no apology due to Sir James Wallace, but every respect, submission, and humiliation before your lordship and the judges of his country. It is the law, and not Sir James he has offended; your lordships will therefore put him totally out of your view in fixing the punishment, in this case, considering merely what injury the public sustains by such a violation of the peace, whoever may be the object of it. It would be most indecent

decent in me to insinuate to the court what I conceive to be the extent of that injury, or the proportion of punishment due for it. Upon the whole, my client relies upon the justice, the humanity, and the honor of the court.

Lord Mansfield desired the affidavit of Mr. George Coombe to be read.

The affidavit of Mr. William Pearce was likewise read.

Lord Mansfield. Mr. Coombe swears, from the size of the cane he thinks it was not a severe beating.—It is proved the hat was cut through, and the leather lining—people don't consider what they swear.

Mr. Solicitor General. I remember it was sworn it was a common small sized cane.

Lord Mansfield. How loose these people swear.

Mr. Mac Nally. My lords I am likewise of counsel for the defendant, Mr. Bourne, I shall make but very few observations, and be extremely concise in what I have the honour of submitting to your lordships.

First, my lords, in respect to the libel, it appears that the original paragraph, published in the Morning Herald, was anonymous, and the defendant has positively sworn it was written and published without his consent or knowledge. In answer to this anonymous paragraph, Sir James Wallace, as appears by the affidavit of Mr. Barr, printer of the Morning Herald, sends a letter to that paper, avowedly written by him, and bearing his signature. He sends it by Mr. Sleight his attorney, his law agent, his solicitor in this cause, and his brother-in-law, as I am informed. This letter has been read to your lordships, and your

lordships perceive it possesses every essential to constitute a libel—it reflects upon the character of the defendant, it holds out a challenge, it tends to a breach of the peace, it dares to throw an imputation of cowardice upon the defendant, for it says that he never came to the point; when one soldier tells another, that he never came to the point, he can only mean the point of the sword, and that the meaning of Sir James Wallace might not be mistaken by the public, he had these words, he never came to the point, printed in italics.

Sir James Wallace, my lords, after having published this libellous, this provoking letter, comes here to seek for justice, but I trust that as it must appear evident to your lordships that he is the original transgressor, you will not consider him as having any claim.

My lords, Sir James Wallace has chosen to seek for justice by indictment, had he come here applying to your lordships for an information, I am confident your lordships would have refused him. I ground my opinion on what I once heard fall from the bench, which confirms me that the court would not have interfered in such case as the present, and on such a libel, by the extraordinary mode of information.

My lords, I allude to the case of Macklin against several persons who had conspired against him. Mr. Macklin applied for an information against six of those persons, but your lordships refused it against two, Reddish and Sparks. It appeared that anonymous paragraphs had been published against Macklin in the news-papers imputed by him to Reddish and Sparks, which paragraphs Macklin answered by a letter, bearing his signature; now the circumstances in that case, and in this, are analogous, for in this case

Sir

Sir James Wallace has answered an anonymous paragraph by publishing a letter bearing his signature.

Your lordship will correct me if I am wrong, I could not procure a written or printed report of the case, the point I speak of came in collaterally, but I have it strong upon my recollection, that your lordship said, "as to Reddish and Sparks, Macklin having appealed to the jurisdiction of the public, the court will leave him to the decision of that jurisdiction, and will not interfere by the extraordinary mode of information."

My lords, I trust that the same motives which induced your lordships not to interfere by the extraordinary mode of information, in the case of Macklin, will in the present case go very far in mitigation of punishment, because the cases are similar, and your lordships see where the first transgression by libel lies, and if you should be of opinion that Sir James Wallace was the first transgressor by libel, I have not a doubt, taking the whole of the case into consideration, but you will also consider that he stands culpable for all its consequences, and of course, that the assault is imputable to him, as being the original libeller.

My lords, there was a fact which appeared upon the trial, which strongly marks the character of the prosecutor, I shall take the liberty of stating it to the court, though I do not find that it has been stated in the report of the evidence, we have heard read by the learned judge who tried the indictment. My lords, this fact is, that Sir James Wallace, speaking of Lieutenant Bourne, forgetting the dignity of the court in which he stood, forgetting the reverence he owed the judge, and forgetting the respect

respect he owed himself, as an officer, called the defendant a scoundrel—I protest, my lord, language does not furnish me with an epithet sufficient to reprobate such conduct.

Mr. Justice Buller. Do you mean that he said so in the course of the trial?

Mr. Mac Nally. Yes, my lord, in giving his evidence.

Lord Mansfield. Did he say so?

Mr. Mac Nally. My lord he certainly did, or I should not assert it.

Mr. Solicitor General. I am not surprized it was not taken notice of by your lordship, Sir James in his evidence certainly made use of the word scoundrel, but so low your lordship might not have heard it.

Mr. Mac Nally. The words he used were “and he beat me with a stick, like a scoundrel as he is.”—

My lords, the urging this expression against the prosecutor is material, and will no doubt make a forcible impression on your lordships; the use I make of it is this.—If Sir James Wallace could so far forget, as I said before, the dignity of this court, the reverence he owed the judge, and the respect he owed himself and to the defendant, as to call him a scoundrel, the natural inference will be that your lordships will have no doubt of his oppressive and insulting conduct to the defendant on ship board; if he forgot himself here, no wonder he forgot himself on board his own ship, where he was under no control, where he reigned a despot, where Mr. Bourne lay at his mercy.

My lords, as to the assault, I consider it, and I trust your lordships will consider it, as a consequence resulting from the original libel published

lished by Sir James Wallace; on this circumstance permit me to observe, that had Sir James Wallace proceeded against Mr. Bourne by action for damages, instead of prosecuting him by indictment, and had it appeared to your lordships that the provocation was such as no gentleman nor officer honoured with his majesty's commission could submit to, your lordship would direct the jury to take the circumstance of provocation into consideration, and to give damages to the plaintiff in proportion to the provocation which he might have received from the defendant to induce the assault; in this case I am sure an English jury would have given a trifle indeed.

Great weight will be laid upon Sir James Wallace's situation. The gentlemen on the other side will represent him as a man of unquestionable courage and consummate honour. I shall not question his courage, but as to honour, it may be said of honour as of wit, it is the property of those who have it, and too often their only property.—Honour, my lord, is the property of my friend, a poor lieutenant, with only his half-pay to subsist upon; he established his title to it by his sword, and by his sword he has protected the possession; and as to professional situation, my friend has every thing in prospect that his opponent can pretend to have obtained.

My lords, when I speak of the courage and honour of my friend, I do not confine myself to his conduct respecting Sir James Wallace, but extend my ideas to that brave and honourable conduct proved to belong to him by the voluntary affidavits of those gentlemen he has served with, and served under, as a naval officer, I mean as lieutenant of marines, fighting in the
service

service of his king and of his country, and bleeding in those services.

My lords, I have only to add, from the affidavits which have been laid before your lordships, from the arguments which have been urged by the learned gentleman with whom I have the honour to act, and who preceded me with so much ability, from its appearing that Sir James Wallace was the original libeller, from its being clear that the assault was the consequence of that libel, and from the humanity which I am confident influences your lordship's breast, you will be of opinion, that though the defendant may have acted wrong in his civil capacity, and erroneous as a man, yet your lordships, though you cannot justify him, will conclude in your private opinions, that he has acted right as a soldier, and therefore in pronouncing the public judgment of the law, you will soften the rigor of justice with the benignity of mercy.

Lord Mansfield. I don't observe there is any thing said in the affidavits about his circumstances, except what he says himself about having granted an annuity.

Mr. Erskine. I believe his case is just this—he is a lieutenant of marines, and the Court Calendar is his title deed—he has no other but that pay. He had a pension for his gallant behaviour, but that is sold.

Lord Mansfield. Not sold, but mortgaged upon an annuity.

Mr. Solicitor General. I believe he don't mention the sum, and not that he had sold it, but charged it with an annuity. His pension is fifty pounds a year, and it is charged with an annuity of thirty pounds.

Mr.

I find by mistake the court has not yet read Lieutenant Bourne's affidavit, I mean as to the assault,

Mr. Bourne's affidavit relative to the assault was then read. See Appendix, p. 22.

ARGUMENTS on behalf of the PROSECUTION.

Mr. Bearcroft, My lords, I am of counsel for Sir James Wallace, the prosecutor, who calls up Mr. Bourne for judgment upon both these indictments, and I am extremely happy for Sir James Wallace's sake, to have observed that patience; and in using that word I mean something more than the ordinary idea of patience, that the court has shewn, in hearing every thing that has been said, and every thing that has been sworn for the defendant—I say, I rejoice in this for the sake of Sir James Wallace, because I therefore insure him he will meet with the same treatment from the court. And if he does I will venture to pronounce, that Sir James Wallace will be found from the beginning to the end of this unfortunate contest, perfectly acquitted in the judgment of men of all descriptions, except in a single instance.

I mean, that he was prevailed on in a fit of irritation to plead before the jurisdiction of a newspaper.

I know that when your lordship comes to pronounce judgment upon the libel, that fault of the prosecutor of the libel will stand the defendant who is convicted of it in much stead, But I

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deny

deny that it will have any consequence, or bear in the least degree, by way of extenuation, upon the assault that was committed, for which I trust the court will give a very serious judgment.

My lord, I am sorry, and I am persuaded Sir James Wallace is ashamed he did put that letter of the 20th of December, 1782, into a news-paper.

It was answered however to the same jurisdiction by the defendant—and answered in the grossest terms that could possibly be used; and if Sir James Wallace's letter had used the expressions which are only to be found in the mouths of the advocates for Mr. Bourne, and not upon the face of that letter, Mr. Bourne was more than even with him by the answer he put into the paper.*

He calls him in one part of that a dastardly coward, and a scoundrel.—That I take from the paper itself. §

With respect to that they were both, I admit, very much in the wrong.

All I have to ask for Sir James Wallace is, that his conduct may be decided upon by your lordships, and those who chuse to form an opinion upon it, not by the judgment of a self-erected court of military officers, of whatever rank, number, or respectability, for their judgment cannot weigh a feather in any man's mind, if it be recollected, that the first principle that is necessary to justice (namely) before they pronounce
ment,

* See Sir James Wallace's letter, Appendix, p. 7.

§ These words, dastardly coward, are certainly in one of the letters sent by the defendant to the prosecutor at Bath, and after published in answer to the prosecutor's letter in the Herald; yet the prosecutor says the defendant never came to the point.

their judgment) is to hear both sides, and your lordships will do that.*

Your lordships have had before you already (and I am serious upon it when I am forced to state to your lordships that every circumstance—every word that is introduced into the affidavits; upon the part of the defendant, are sworn by him, and confirmed, as some of them are by other witnesses in their affidavits) every thing that can bear the least colour of extenuation of an offence, which is expressly contradicted by Sir James Wallace, and supported by more in number, and equal character, it will not be disputed.

I say it is a melancholy circumstance, that this unfortunate business, which has created so much uneasiness, is to end in the contrast of affidavits upon facts between a great number of persons of undoubted respectable character, credit, and honour, but such is the case.

My lord, it is supposed there is an extenuation of the conduct of Mr. Bourne upon this occasion—upon these grounds (to state it shortly.)

That he was under the command of Sir James Wallace; that Sir James Wallace abused his situation, for the purpose of insulting in an ungentleman-like manner, and oppressing him frequently when on board his ship with him.

That they state as the provocation that led to every thing else.

It was observed by my learned friend, who spoke the second, that he claimed a merit for his client, in suppressing that natural indignation

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* Both sides were heard by the Portsmouth corps before they came to their resolutions: Major Varlo on the part of Sir James Wallace.

that he must feel at the insulting and oppressing tyranny of Sir James Wallace.

The court will see when the affidavits come to be read, whether he is entitled to any such merit.

The counsel for the defendant, though they were warm, and went very much at large, in point of declamation, yet did they forbear to enter minutely into these long affidavits; they touch, however, upon some parts of them, but it is my duty to be a little more particular, and to state to your lordship such a body of contradiction through every part of them, that at least I have a right to ask this of the court, not to believe them, and not to take the fact for granted.

For that is enough, and I would not wish to decide where I see positive contradictions between gentlemen, neither of whose characters I am acquainted with, but I have a right to say to the court, and I beg it may be remembered, when the judgment comes to be pronounced, there is such a contradiction to very material facts laid before the court to the affidavits of the defendant, the court must at last judge of, and they cannot form their judgments, taking those to be facts.

My lords, I will say more—I will say when Mr. Bourne's affidavit comes to be attended to, and the contradictions, such as they are, traced and observed, it will be seen Sir James Wallace, so far from being blameable, oppressive, or tyrannous in more than one instance, behaved with a kindness to Mr. Bourne, which deserved a different interpretation.

The intention of the defence may be seen in the first affidavit, Mr. Bourne sets out with in-
question,

roducing a fact which has no relation to this question, for the purpose of giving bad impressions of Sir James Wallace's conduct at the first instant that he came to the knowledge of Mr. Bourne, for the purpose of making the court believe it was true, (your lordships will look at the affidavit, and see whether you believe it) that Mr. Bourne had such an aversion to the character of Sir James Wallace, that when he came to Portsmouth to go on board the ship, he solicited and endeavoured by all possible means to prevail upon other gentlemen of the corps to go in his stead, but he could get no man, however disposed to serve a man of Mr. Bourne's character, to exchange with him for so bad a birth—that is an expression he chuses to use.*

In August 1771, says Mr. Bourne, I became acquainted with Sir James Wallace—it happened in this way.—A friend of mine (a Mr. Murphy) came into my room (where I was confined with wounds I had got in the public service) with Sir James Wallace, who had had a quarrel with Mr. Murphy, there had been blows, and I interfered to put an end to it. A Mr. Sleigh, a friend of Sir James Wallace's, was afraid it would still go further, and the next morning again applied to me, and I (Mr. Bourne) used a great deal of pains, and did at last succeed to prevent any further consequences between Sir James Wallace and Mr. Murphy.

Now it is clear beyond a doubt this bears no competition with the answer, for it happened that Sir James Wallace was going down some stairs by the waterside when he endeavoured to pass

* See the several affidavits in the Appendix, proving the fact here denied.

pass this Mr. Murphy, a lady, and a child, and a little dog—Sir James Wallace with a stick he had in his hand struck the dog, to make way for himself to go by—Mr. Murphy flew into a violent rage, and struck Sir James Wallace upon the face. That instant he returned it, and there was a scuffle between them—with great difficulty they were parted, and they instantly went to the room where Mr. Bourne was. It was asked in an instant who the parties were. The instant Sir James Wallace's name was announced, Mr. Murphy, in the presence of Mr. Bourne, begged his pardon, and used the strongest words of contrition; said he was excessively sorry for what he had done, and made the strongest acknowledgements of sorrow for what passed, and there was an end of it. The next morning he sent a letter to Sir James Wallace, there can be no doubt of it, for I can read the letter from Mr. Murphy himself; in which, after expressions of great respect for Sir James Wallace, and great sorrow for what had happened, he treats it as a circumstance of advantage to himself—They had got acquainted, and Mr. Murphy immediately proceeded to make an advantage of it, and he begs the favour of Sir James Wallace to provide for a young man sixteen years of age, who was then in the sea service.

This letter shews the misrepresentation of this part of the story. The letter shews there was an end of that business upon the spot, and there was not, in truth, any expectation of that quarrel being renewed.

I complain of the defendant setting out with this—If it was true as stated, I complain of it still more when it comes to be explained, when

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it is not stated according to the truth of the matter.*

It is said Mr. Bourne was so very averse to sail under Sir James Wallace, that he attempted an exchange. I have an affidavit of Mr. Spry's to read, the first Lieutenant's of the 'Warrior,' † a man of excellent character in the neighbourhood; he swears so far from it, that frequently in conversation with Mr. Bourne, after he had been on board the ship in the early part of the voyage, Mr. Bourne repeatedly expressed his happiness of sailing with Sir James Wallace, and bore ample testimony of his general character, which is utterly inconsistent with the idea of Mr. Bourne's affidavit, who swears that his mind was at that time oppressed with a bad opinion of Sir James Wallace, after that affair at Whitehall.

Now I will come to another circumstance which appears upon our affidavit, which is nevertheless fit to be stated.

Mr. Bourne complains of Sir James Wallace's treatment; now what was the first intercourse they had? As soon as Mr. Bourne gets down to Portsmouth, he asks Sir James Wallace's leave to go to London for three days; Sir James says, Sir, I cannot give leave, it is improper; but if you will only go for three days, I will do what I can—I will not take notice of it; he actually stayed fifteen days, and Sir James Wallace did not take notice of that. Who was it that conferred an obligation? Who behaved handsomely and

* See the affidavit of Mr. Murphy and John Jackson in the Appendix, where the facts of this narrative are truly related, and those here stated are fully contradicted.

† For this man's excellent character see the note to his affidavit in the Appendix.

and kindly in the first intercourse between the parties.

When they got to Madeira general orders were given that no officer should be on shore; the reason was given that the enemy's cruizers were about, and it was necessary for the officers to lay on board. Sir James Wallace, and several officers in company, dined on shore with the British Consul. Mr. Bourne was introduced by Sir James Wallace to the Consul. As they were rising from dinner Mr. Bourne asked leave of Sir James, against the general orders, to stay on shore that night. He was unwilling to grant it, but at the same time unwilling to refuse him in such a company of strangers. He gave him leave—at his second request he was not refused. What was the consequence? Mr. Bourne and one of the gentlemen, Mr. Markett, that joins with him in the affidavit, got intoxicated on shore—go to the Theatre, and behave in such a way that they are turned out of the house, insulted, beat, and abused. I state the affidavits. He did not return the next day—he stayed another night. In the morning when Mr. Bourne and Mr. Markett had returned so treated by the inhabitants, an ironical note in the name of both Mr. Bourne and Mr. Markett, was sent to their commanding officer, Sir James Wallace, in some such terms as these—your lordship will see set forth in the affidavits.

Mr. Bourne and Mr. Markett present their compliments to Sir James Wallace, and return him their particular thanks for the favor he did them in introducing them to the Governor of
Madeira

* This statement of facts is fully contradicted by the affidavits of Lieutenant Monke, Markett, and defendant.

Madeira, to which circumstance they attribute the polite treatment they received on shore.— This is proved upon oath.

This was an insult, if you talk of insult, it was the *first* that was given upon either side*.

Sir James Wallace sent for Mr. Bourne and Mr. Markett, he asked them what they meant by it, and I believe he told them upon that occasion, and Mr. Bourne particularly, that he behaved very ill, or something of that sort, and told them if such was their conduct he could have no farther acquaintance with Mr. Bourne, and he puts an express negative as to any other expressions, being used by him warmer or stronger than these†?

What is the next thing—That one evening Sir James Wallace was sitting in his cabin, and he hears a noise in the ward-room (the place where the officers usually sit) he enquires, and it turns out to be occasioned by Mr. Bourne; an officer, Lieutenant Stephenson, was in bed, whose place it was to turn out in an hour or two to take watch in turn. He begged Mr. Bourne not to make a noise, and he says he attended not to it. In consequence somebody put out the candles to put an end to it. Mr. Bourne was exceedingly angry, and sent to Sir James Wallace this kind of message: That he took it for granted that Sir James Wallace had some malice to him, and had ordered the man that blew out the candles to do it.

That was exceedingly strange, it is impossible to be true, he sends to him as if Sir James Wal-

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* By what rule of logic does the learned barrister conclude, that to be the first insult, which is clearly a consequence of an insult.

† Lieutenant Markett positively swears, that the prosecutor said "Why, if you thought yourself aggrieved or affronted, did not you call me out, or words to that effect. See Appendix, p. 11.

lace had talked to him about fighting, and asked him if I have used you ill, why don't you call me out. That is denied by Sir James Wallace and several persons who were present at the time, and as positively Sir James Wallace says, that the harshest expression he used to him was—go along, sir, you are a very troublesome man.*

Now I come to that part which the gentlemen chuse to dwell upon, that is the exclusion of Mr. Bourne from the quarter-deck, and the tyrannical insult which, without any provocation, Sir James Wallace is supposed to have thrown upon Mr. Bourne—to represent it in the words of the learned counsel, it is that Sir James Wallace came from his cabin in the manner of an insane man, with his eyes flashing fire, the words of my learned friend, clenching his fist in the face of Mr. Bourne, and he then said to his next officer, Lieutenant Spry, Mind sir, my orders are Mr. Bourne does not walk upon the same side the quarter-deck with me.

Then Mr. Erskine says, by the cast of an eye which he threw upon our paper, by the bye he had no right to cast his eye at all upon it, but be that as it may, it was only a cast of his eye, or he would have stated it more correctly than he did, he would have stated it as a right and privilege of the captain to do as he pleased. Now how is it stated by Sir James Wallace, and sworn to by several others? In the first place he puts a direct negative positively, and says he did not behave in such a manner, he is confirmed in that denial by persons present

* See note (*) In Appendix, p. 3. where Mr. Bourne says, that Lieutenant Stephenson acknowledged he was drunk, and asked defendant's pardon for his ill-conduct.

sent, and his order to the officer, that Mr. Bourne was not to walk upon the same side is denied, that is sworn to by Sir James Wallace and several others*.

I presume the captain has the privilege of walking on the quarter-deck—I claim no other privilege for him than that. Mr. Bourne came from the place where he was walking, and he passed and repassed Sir James Wallace with a hectoring gesture, shouldering him, and insulting him, in the manner sworn by the several affidavits; thus provoked, Sir James Wallace said to Mr. Spry, Understand, Sir, it is my desire Mr. Bourne does not walk upon the same side the deck as I walk upon. Was it not justifiable? Was it not perfectly provoking? When Mr. Bourne comes out of his place, and comes up in an insulting manner to him, he requires in future he should not do so. He had a right to do that—he has forbearance if the fact be so—He would be perfectly justified in order, to borrow the phrase of my learned friend, if he had said he should walk upon no side of the deck, or that he should not come at all upon that deck, he certainly would be warranted if he had done that. Thus the case stands. I don't recollect in the course of it, there are any other charges fit to be attended to, particularly in this court; except, as I said before,

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calling

* See note to Appendix, page 30. The prosecutor acknowledges in his affidavit, p. 30, that he said, "Mr. Spry, my orders are, that Mr. Bourne does not walk with me." Now taking these to be the words, was not this order virtually prohibiting the defendant from walking on the same side of the deck with the prosecutor? But the true expression, as sworn to by Mr. Bourne, is corroborated by the oath of lieutenant Monke, who goes further than Mr. Bourne, for he adds, that after the prosecutor had given his prohibitory order to lieutenant Spry, he turned to the defendant and said, "therefore, Mr. Bourne, you must ever walk on the opposite side." See Appendix, p. 9.

calling for the judgment for the libel, which is a crime that provokes assaults and challenges*.

The defendant has been advised to state to the court, that upon many occasions, and particularly at Jamaica, Bath, and London, he had challenged and endeavoured to provoke the defendant to fight, and he would not do it.

I find myself in great difficulty how to conduct myself as to that point—I am afraid my client, Sir James Wallace, has been led to follow up that example. I am afraid he has followed a bad example, and that he has gone into that point, which, however fit it may be for a court of marshals of France, is not fit to come before the judges of the court of King's Bench, but if an apology can be made for every thing Mr. Bourne has done, of whatever kind, however outrageous, I trust Sir James Wallace's apology will be allowed, for his feelings, when he shews upon the face of this affidavit, he has at all times done, and been ready to do, every thing that becomes a man of honor, and of the strictest punctilio to do.—I aver it.

I am afraid to point out the particular parts of the affidavits; your lordships said, when the affidavit of a noble lord was to be read, you were to have lord Cork's opinion.

It was extremely improper, they have filed their affidavits, and I have the affidavit of lord Cork, who tells a story perfectly different from my ideas of it, for when I talk about the punctilio of honor, I mean this, that Sir James Wallace never would permit

* That libels, as well as ill language provoke assaults and challenges, is very clear from the present case. It was a libel provoked the conduct of the defendant, and that libel was the production of Sir James Wallace, and yet for answering that original libel the defendant has been punished!

permit himself to be in private with Mr. Bourne; he was perfectly right, for he did not chuse to say a word about it in the presence of third persons. Each of the parties were incensed against each other, and if the conduct of Sir James Wallace, from the beginning to the end, had been properly known to those officers, colonels, and captains, and of whatever rank they were in in the army, were said to have formed their opinion upon it, if they had had the true state of the case before them, they would have given a very different judgment*.

It is suggested that Sir James Wallace has behaved excessively ill, for that at Bath he pulled out his pistol to Mr. Bourne; and it has been suggested Mr. Bourne sent a sort of challenge to him, and that Sir James Wallace made a paltry evasion about ladies being there.

I beg of your lordship, and of every body that has curiosity to attend to this business, to mark the affidavit upon that part.

Mr. Bourne sends a letter, without a name, that a gentleman at an inn wants to speak with Sir James Wallace; Sir James Wallace returns for answer, and desires to know his name, for he will come to no person without a name; there came in reply a message, it is a Mr. Bourne; the answer is, I have no business with Mr. Bourne; in this part of the affidavit it is said, if Mr. Bourne has
any

* The resolutions of the marine corps upon the conduct of the prosecutor and defendant were not partially, nor rashly entered into, as is here represented by the counsel. At the meeting of the Portsmouth division, Major Varlo urged every thing in favour of the prosecutor that his *attachment* could suggest, and it was after a full hearing of both sides of the question, that the defendant received that proof of approbation from his brother officers, in which they still persevere, and which fully compensates him for every inconvenience he has suffered, or may suffer under the infliction of a *cruel and unusual* punishment.

any thing to say to Sir James Wallace, let him send and propose his terms, he will answer it.

As to the pistol in the street, it has been proved Mr. Bourne threatened to cane him wherever he met him, and do him a mischief; and Sir James Wallace swears, that conceiving some insult of that kind, or dishonourable treatment might be attempted, he put pistols in his pocket for his safety, to repel any such attempt; the fact proves he had ground for his suspicion, for as he was coming down the street, Mr. Bourne went up to him, flourished his cane, and was going to strike him; Sir James very properly pulled out one of his pistols, placed it upon his sleeve, and told him to keep off. No improper, or illegal use were made of those pistols*. As to any improper use of them in another way, it is improper for me to say a word. After this the parties came to London, and there is a publication in the newspapers.

It is insisted in the affidavits upon the part of Mr. Bourne, that he knew nothing of that former publication—He has sworn it, I have no right to say that is not true, because I have no affidavit to the contrary, and the nature of the thing does not admit it, but whether he knew of it or no, he was the cause of it, beyond all doubt, for it is in proof by the affidavits, Mr. Bourne made it his constant, daily, and hourly practice to go about in all companies, and represent to every man he met, friend, acquaintance, or stranger, that Sir James Wallace was a dastard and a coward, that he had provoked him, and sent him a challenge, that he had beat him, and would beat him wherever he met him. It

* But Sir James Wallace did then absolutely refuse to retire with Mr. Bourne, to make a proper use of his pistols, and yet it is urged that Mr. Bourne never challenged Sir James! See the indictment for the libel, p. 3.

It was extremely natural therefore for Sir James Wallace to suppose he was the author of the publication in the newspaper.

I rely upon this, the libel is answered by the affidavits, and there is no colour to say there is the least extenuation of the assault under the fun.

My learned friends have agreed, that in point of honour he could do no less. I have no difficulty to say, that my humble opinion is, that in point of honour he ought not to have done near so much.

If it is necessary, to use the school-boy's phrase, to give the coward's blow, was it necessary to strike him in the manner he did, attended with such effects which the blows were, that shewed the manner in which they were given. It is impossible those blows could have been given merely for the purpose of preserving Mr. Bourne's honor. The manner and effect of them shews they were given with malevolence. I now condescend, under such circumstances as these, to make an apology for the first count in the indictment, and yet, my lords, if it were a fault, it is not attributable to Sir James Wallace; when assaults are attended with such circumstances as these, a common clerk of indictments, that has instructions to draw them, of course, puts in such counts, whether right or wrong. It is not attributable to Sir James; I appeal to the recollection of Sir James, the moment the cause came to be tried, if I did not say, I was sorry there was such a count. In my own judgment, I thought the evidence would not warrant the finding him guilty of it; and in truth I had not the least difficulty to persuade Sir James Wallace, that it was improper.

I trust every imputation upon scores of that kind is properly washed off.

Then is there any vindication of the assault?

Here

Here is a dispute between an inferior officer and a person under whose command he is. Says Mr. Bourne, I have been insulted; I have been oppressed, as a man of honor I have behaved, if I had not behaved so, I must have given up my commission, and have dragged on, through life, a miserable existence.

I have no objection the cause should be tried upon that criterion, I assert upon affidavit it will appear, there is no colour to charge Sir James Wallace with insult or oppression; the only fault he has been guilty of was, in not calling Mr. Bourne to a court martial upon his conduct*. You will permit me to observe upon Mr. Bourne's application to Sir George Rodney, for a court-martial upon Sir James Wallace, I will be judged by Sir George Rodney, who thought he did right there, that he acted like a man of sense and courage, and he saw no colour for a court-martial upon Sir James Wallace, at the instance of Mr. Bourne, and he would not give it, but he saw they were not fit companions for the same ship, and in kindness to Sir James Wallace and Mr. Bourne, who is pleased to say so, he withdrew him from that ship†. Certainly no consequences can be drawn from that, one way or the other. Here is an assault which was cruel and outrageous. This court does indulge passions and provocations even in words, where they mitigate a great offence to a small one, because the court indulges passions which are incident to human nature, as sudden passions are. Was that the case? It was his determination long before to meet him, and wherever he meets him, this young officer insults him in the manner stated.

I submit

* Sir James Wallace, by his own confession, did apply for a court-martial, and it was refused.

† See Appex dix, p. 31.

I submit to the court, there will not be upon the facts, when they come upon the affidavits the least extenuation. I submit that the court will, for the sake of preserving discipline in the navy, and every thing which is decent and proper, pass a very severe sentence for the assault, which, if they do not for the libel, it will be a sort of punishment upon Sir James Wallace, which I must confess, he in some degree deserves, since he first of all began it in the news-papers*.

The affidavits of Sir James Wallace, Major Varlo, Thomas Spry, and Robert Farries, read.

Lord Mansfield. Don't read the affidavits to the same fact over and over again, only put the affidavits up; a great many have contradicted what Mr. Bourne says†.

Mr. Law. Yes; about five witnesses.

Lord Mansfield. The complaint to Lord Rodney, was barely upon the orders not to walk upon the quarter-deck.

Mr. Bourne. My lord, it was for public insult and oppression. The letter to my Lord Rodney mentions it.

Lord Mansfield. But hear what I say, the affidavit states the complaint, and ordering you not to walk upon the quarter-deck, on the same side, on board the ship.

Mr. Erskine. If your lordship will give me leave, Mr. Monke in his affidavit swears, that the charge was for insult and oppression of Mr. Bourne, whilst under Sir James Wallace's command.

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* This is a new species of logic. It stands thus, Sir James Wallace first began a libel in the news-papers, which libel was criminal, this libel produces an assault, and therefore the person committing the assault, shall suffer under a severe sentence, and that for the indulgence of the person who criminally provoked it.

† Why did not his lordship add, and a great many have confirmed what he has sworn to?

Lord Mansfield. What I speak is from the defendant's own affidavit.—That he laid a complaint before Sir George Rodney against the prosecutor, for ordering him not to walk the quarter-deck; besides, there was no such a thing as a complaint in general words of insult and oppression, he must specify it—It struck me so upon reading the affidavit*.

The affidavits of James Mildenhall, the Earl of Cork, William Davis, and James Madan, Esqrs. read.

The affidavit of Ralph Dundas, Esq. called for.
Lord Mansfield. You need not confirm my Lord Cork's affidavit†.

Mr. Sylvester. Your lordship will please to favour me with a few words upon the part of Sir James Wallace, who now calls upon your lordship, for judgment, for as gross a libel as ever was published upon any gentleman. Grosser language could never be made upon any gentleman than has been made use of in this libel‡.

Much has been said by the gentlemen on the other side, of nice feelings of men of honor, who when they conceive their honor is hurt, will seek for satisfaction; I agree with them in every respect, but this has not any application to the present subject, for those nice feelings and honorable

* The noble lord only speaks here of one paragraph in the defendant's affidavit, and did not attend to the following passage, "And also requesting that the admiral would order a court-martial on Sir James Wallace for public insult and oppression, and a breach of the fifth article of the printed instructions, in attempting to punish deponent." See Appendix, p. 5.

† Why not confirm it, when it stands contradicted by the affidavits of captains Desborough and Hamilton, men possessing a sense of honour, and estimation of character, worthy any situation, however elevated. See the notes on lord Cork's affidavit in the Appendix.

‡ Mr. Sylvester differs materially with his coadjutor, Mr. Bearcroft, respecting this point, for the latter learned barrister candidly gives all expectation of severe judgment upon the libel, fairly acknowledging, that the libellous publications originated with his client.

ble conduct do not apply to the present defendant.

I am sure neither of those gentlemen are men of honor, who have misrepresented the facts by way of extenuation, for no man of honor would do as Mr. Bourne has done, put that upon affidavit that has been contradicted by some of the most respectable people, from the very first; beginning with what Mr. Bourne has set out with, to the last period, there is not a single circumstance in point of fact or in point of date, but what is contradicted, and not contradicted in an indifferent manner, but positively so without evasion†. Every fact from the beginning to the end is absolutely contradicted by the witnesses, not by one alone, not by Sir James alone, but by five or six†.

Mr. Bourne first begins with transactions of an early period, by way of inducing the court to believe Sir James Wallace was at enmity with him, and that before he entered on board the ship, a quarrel had subsisted. He states the quarrel between

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* Mr. Bourne flatters himself he suffers but little in the estimation of gentlemen, for differing from this lawyer, in what constitutes the proper pursuits of honor, and it being clearly a subject to which he is incompetent both in theory and practice, his judgment upon it is not worth controverting.

† While Mr. Bourne's opinion of honor, stands approved by the assent of his counsel, men who evidently felt those principles they maintained, and while it is also approved by men of his own profession, who have amply testified to the propriety and necessity of the measures he adopted to call his opponent to account, he feels a satisfaction, a pleasure at his heart, which fully compensates for the extraordinary sentence, intended to crush him with peculiar severities.

‡ This is assertion not argument, nor proof; its falsity is established by the affidavits on the part of Mr. Bourne. Can the history of law chicanery furnish an instance of grosser absurdity than a man acting disingenuously at the same instant that he dares presume to give an opinion upon what constitutes a point of honor?

tween Mr. Murphy and Sir James Wallace— That Sir James Wallace and Mr. Sleigh came into his room, that he interfered in order to make up the quarrel, that Sir James Wallace laid hold of him by the breast, and asked him if he wanted to take that quarrel upon himself; that fact is absolutely contradicted not only by Sir James Wallace, but Mr. Sleigh says so far from Sir James Wallace laying hold of Mr. Bourne by the breast, he did not touch him, he did not come near him*.

But says Mr. Bourne, the next day Mr. Sleigh came to him, and was afraid of the consequences of it. Mr. Sleigh positively denies that fact, and says he never was apprehensive of any consequences arising from it.

What was the conduct of Mr. Bourne and Mr. Murphy, the moment they knew the name of Sir James Wallace and his character, they immediately shrunk back and were ashamed of their conduct. The next thing Mr. Bourne says is, he was always desirous of quitting the ship, and that he endeavoured to get other officers to exchange with him: now the reverse of that is proved; by the affidavits it is proved, that he said, that he thought it the happiest thing in his life, to sail with so brave and excellent a man, and Mr. Spry says many young men would be happy to be under Sir James Wallace, as they must expect many valuable prizes†.

Mr. Bourne says, before he came to Jamaica he had frequently been insulted by Sir James Wallace

* See the joint affidavits of Mr. Murphy and John Jackson, in Appendix, confirming what Mr. Bourne has sworn to.

† In the affidavits of Lieutenant Monke, Markett, and Crebbin, &c. &c., all contradicting Lieutenant Spry.

lace coming up upon deck with his fists clenched in a menacing provoking manner, and driving him from side to side of the deck. If that had been the case every officer on board must have heard of it—what do the officers say?—But not one of them heard it, if it had passed they must have heard of it—It could not be done privately—Every one of them, Mr. Spry, Major Varlo, Mr. Ferris, all contradict Mr. Bourne, every one denying that fact.

The next thing Mr. Bourne swears is, that Mr. Stevenfon came, seemingly intoxicated with liquor to Mr. Bourne, behaved with insolence to him, and afterwards put out the candles, That he then sent a message to know if it was done by Sir James Wallace's orders—Mr. Spry came down and enquired into the matter; he told him there was some dispute upon the subject, that he thought Sir James Wallace had sent the orders. Mr. Bourne says, Sir James Wallace sent for him to his cabin, and when he came, Sir James desired him to get away, that he would say nothing to him at that time, but that he would take another opportunity, and he, Mr. Bourne, should hear from him, Sir James Wallace. Is it likely a commander of a ship should send for a lieutenant of marines, and then tell him, I will say nothing to you now, you shall hear from me—Was that likely from a commander to a subaltern? Is that probable*?

But says Mr. Bourne, at that time there was present, the captain, the master, and the surgeon of the ship.

Neither one of those facts are true, not one of them—Mr. Spry, the lieutenant, went down to know

* The likelihood or probability of the fact, was not the objects for the court to conclude upon, but the truth, and it has been positively sworn to.

know what the disturbance was, says, it was between ten and eleven at night, and Mr. Stephenson, the lieutenant, who was obliged to go upon the next watch, at twelve, wished to have some sleep; he made enquiry what was the matter, he said Mr. Bourne has made a great noise, and has disturbed me; I am going to the middle watch, I frequently desired him to discontinue it, he would not, upon which I got out, and put out the candle. There was nobody present, but Major Varlo and himself, and Lieutenant Spry; and the captain, instead of making use of the words Mr. Bourne says he did, only told him, he was a very troublesome man—That was all.—And as to the fact of the master being there, the master had lost his leg twelve days before, and was confined to his bed*. The surgeon was not there, but was ill and confined to his cabin. He must know that it was not Sir James Wallace sent the orders to put out the candles, because Mr. Stephenson, the lieutenant, was in his cot at the time, in bed, and was to get up at twelve o'clock to take next watch. As to the insinuation that he was intoxicated with liquor, Mr. Spry swears, a soberer man never was on board a ship, and that he never once saw him intoxicated in liquor.

Lieutenant Ferris, who supped with him that night in the ward-room, swears, he went to bed perfectly sober. What can your lordships think of a man misrepresenting facts, and stating facts, every one of which is perfectly false†. There is not a cir-

* This is a wretched subterfuge, and mean prevarication on the part of Sir James Wallace; it is very true that the master was wounded and in bed, but Ferris had, in consequence of that accident, been appointed to act in the capacity of master, and to him it is that Mr. Bourne alludes in his affidavit. See notes to Ferris's affidavit in Appendix.

† Every person must think that a man who misrepresents facts, and is guilty of falsehood, should be booted from society, and Mr. Bourne thinks
Lord

circumstance of any transaction that passed, but what is denied by those witnesses.

The next day after putting out the lights, he says, Sir James Wallace seeing him, Bourne, upon the quarter-deck, came running out of his cabin in a violent manner, with his fists clenched in his face, muttering out the word scoundrel, but he, really thinking that said Sir James Wallace was that instant in a state of madness, he turned away his head and went to the other side of the deck, and walked with Lieutenant Monke the officer of the watch; that Sir James Wallace then walked backwards and forwards in a violent rage, and then went back again into his cabin. That he shortly returned and called out Lieutenant Spry, and gave public orders, that whoever treated him with disrespect should never walk upon the same side of the quarter-deck with him, and therefore, Mr. Bourne you must ever walk upon the opposite side*.

This is not only contradicted by Lieutenant Spry, who receives the orders, and Sir James Wallace, but by Major Varlo, who, when he was sent down to the ward-room to this very man, Bourne himself, and Bourne complaining of these orders to him, that he had been ill-treated, he does not venture to say one single word of it—It was private he had been ill-treated, he does not venture to say one single word of it to his commanding officer. Mr. Varlo, the major of marines on board, says, he not only never heard from

that the man who does so for a pecuniary fee or reward, is even worse than the wretch who volunteers in such scandalous business.

* These facts are positively sworn to by Mr. Bourne and also by lieutenant Monke, who describes them in the strongest and most emphatical language. Scoundrel seems to be a favourite epithet with Sir James Wallace, he applied it to the defendant on the trial. See Mr. Mac Nally's argument on this point.

from any person, of any ill usage from Sir James Wallace to Bourne, but that he never once complained to him, and that if he had, he says, he should have thought it his duty, as his commanding officer, to have taken him under his protection. At the very moment the transaction passed that he now complains of, this ill-usage and being turned off the deck, he never complained to him of the orders he should not walk there*.

Here is another fact which is not perhaps very material, but which shewed the temper of mind of Mr. Bourne in making this affidavit—He says, the ill usage was continued for two or three weeks after, now in less than six days they arrived at Jamaica, instead of two or three weeks†.

Mr. Bourne states in the affidavit, that when they arrived at Jamaica, they met on shore at Port-Royal Harbour, he met with Sir James Wallace in company with Major Varlo, that he gave him an opportunity of explaining himself, which he declined, and walked quickly away from him, and went to his boat.

Major Varlo says, that in the dusk of the evening Sir James Wallace and he met Mr. Bourne on shore at Port Royal, that Mr. Bourne came up and said, I have something to say to you—Sir James Wallace said before Major Varlow, I will have no conversation in private with you, Mr. Bourne. Major Varlo, says that is all that passed, that nothing more passed but this, and from this you are to suppose, was what Mr. Bourne

* Mr. Bourne includes in the two or three weeks he swears to, the time which transpired from the insult received by him from Sir James Wallace, to the arrival of the Warrior at Jamaica, and his removal from her to Le Hector.

† See note to Major Varlo's affidavit, page 56 in the Appendix.

Bourne calls evading an explanation in Port Royal.

The next fact is what passed before Captain Fisher—Captain Green is the next person that swore to what passed at Port Royal, he could not hear the whole of it, being at some distance. But he saw Sir James Wallace—Mr. Bourne came out of a Negroe-hut and went up to him, and asked him if he had any thing to say to him, upon which Sir James Wallace said he had not; then says Mr. Bourne, I have to you, walk in private. No, Sir, says he, I will not have any private conversation with you.*

I trust no man in England will have private conversation with him after this; he should take care how he misrepresents things, when people are present that can flatly contradict it.†

Then he says, though he continued some time there, he never once heard from Sir James Wallace.

Two days after this very transaction, Sir James Wallace was under sailing orders, therefore he must have been very expeditious indeed if he had.

Then he says he heard Sir James Wallace had been aspersing his character—Then what was his conduct at Bath? Mr. Bourne comes to an inn, there he sends for a waiter, and desires a private room up one pair of stairs, and when there, he sends the waiter out with a written note, but a private note, and sends for Sir James Wallace—Says he, I will not come to a person that will

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* See affidavits of Mr. Peacock, Mr. Weir, &c. in confirmation of Captain Green and Mr. Bourne.

† The spirit of prophecy is not among the attributes of Mr. Sylveiter, Mr. Bourne having been honoured since his confinement with the attention, conversation, and approbation of the most respectable characters.

not send his name—Sir James Wallace was not with ladies, but setting with lady Wallace, He then sends word his name is Bourne—Says he, I have no business with Mr. Bourne—Then what was Mr. Bourne's conduct? He prepares himself with a brace of pistols, and Captain Webber that makes the affidavit in this court, sends him a sword—When he returns with the message, he finds Mr. Bourne had put the sword and brace of pistols on the table in the room. *

For what purpose was the sword and for what purpose were the pistols in a private place up one pair of stairs, in a place where no officers wear a sword—In Bath therefore he must expect and must know Sir James Wallace must come unarmed.

It is not for me to know his design, my feelings go beyond that, I think no man of honor would arm himself when he sent for a disarmed man.† What is his conduct after that?—he writes a letter—an abusive letter—he then meets him in the street, not by accident, but with his friend Webber, who had sent him the sword—Davis meets him in the street, and Webber says to Davis, come along with me, you will see Sir James Wallace beat or caned. Says Davis, I know Sir James Wallace too well, and all the world knows he will not suffer it—Come along with me, you shall see it—They came together down the street—Mr.

* The insinuation here, clearly imputes the diabolical intent of assassination to Mr. Bourne; he heard it with surprise and horror! the impression of horror still remains, but his surprise has abated—men long used to habits of sanguinary prosecutions, who argue under the sole influence of a fee, without inquiry into distinctions of right and wrong, imbibe gloomy ideas; and as naturally annex the idea of assassination to a sword or a pistol, as boys or fools attach darkness to the devil.

† See Mr. Bourne's last affidavit, where he positively swears he had not any weapon whatsoever in the room he was to receive Sir James Wallace in.

—Mr. Bourne came across the street in company with Mr. Webber, and keeps his eye upon Sir James Wallace and Bourne—what words passed they could not hear—He says Sir James Wallace pulled out a pistol, and holds it at his breast—He never offered to strike, if he had he knew it must have been followed with instant death. His own language is, I did not dare strike him, if I had I should have been a great fool indeed, for he would have shot me. And yet he comes to London, and buzzes it about at Bath that he has caned him, and treated him with infamy, and as my learned friend said, gave him a blow never to be wiped off.

What then was done—he meets with a Mr. Abbott the next day, who told him if he had sent a written challenge Sir James would have met him, to which Mr. Bourne said, from the opinion he had of Sir James he would not venture to give him possession of a written challenge—then he states he meant to publish his letters; this was long before Sir James Wallace thought of publishing the letter. He told Mr. Abbott there was to be a publication of every thing that passed—then Sir James very unguardedly publishes his letter—when they come to town what was Mr. Bourne's conduct there?—Mr. Bourne tells every body of the transaction, that he had met with Sir James Wallace, that he had caned him, and treated him as a scoundrel, with every mark of contempt one man can treat another; and this with impunity. He tells them he had sent him a challenge by Lord Cork, and Lord Cork had agreed to be his second—Lord Cork denies the fact—he says, what I did was from a motive of friendship, I never meant to enflame

this man, so far from that Mr. Bourne himself must know it was false. Bourne says he applied to a nobleman to carry the challenge—Lord Cork says he absolutely refused, and says he never meant to go as a second, but as a mediator, and asked Bourne, who did you mean by a nobleman that was to be your second? He answered, your lordship; then his lordship said, how came you to do that? upon which Mr. Bourne makes an apology to him for it.* That is Mr. Bourne's kind of conduct to misrepresent things. If your lordships are to make use of nice feelings, according to the arguments that have been made use of upon the other side, what would your lordship say to it, now when the weight of evidence is all upon one side?—it does not rest upon Sir James Wallace's affidavit alone, but he is confirmed in every circumstance, where any person is present, or can be present, he is confirmed in what he says—Mr. Bourne stands unconfirmed in many circumstances, there is but one only in which he is confirmed—He gets a poor young man of the name of Markett to make an affidavit to a fact he himself does not dare to make an affidavit to. Mr. Markett swears, after a very fine panegyric upon Mr. Bourne, (drawn perhaps by himself) he swears to one fact which is denied by all the other witnesses.† The fact was, that Sir James Wallace put the question to him in the presence of several officers of the ship—Why if you thought yourself

* See the notes upon Lord Cork's affidavit, where this assertion is fully disproved.

† This *poor young man*, Mr. Markett, as Mr. Sylvester has been pleased to call him, was Lieutenant on board the *Warrior*, a gentleman of honor and elevated courage, who could not have been induced to make affidavits by the influence of Mr. Bourne, or any other man, but nobly stood forward and voluntarily gave his testimony.

yourself aggrieved or affronted did not you call me out? That is denied by every body.

If your lordship was to sit upon this either in a court of honor or a court of law—Is Mr. Bourne entitled to any degree of compassion?—Is his conduct that of a man of nice honor and feelings, who is hurt by ill-usage, or the disgrace he may receive. I can conceive a man distressed by the conduct of another man towards him, then he is to be pitied—perhaps it was not in his power to be redressed; but in this case I think Mr. Bourne is more disgraced by what he has stated upon the affidavit, than any other transaction that is stated to have passed.

Mr. Lawe. Please your lordship to favour me upon the part of Sir James Wallace, who brings this prosecution.

I conceive there never was an instance in which the merciful rules of this court, which permits defendants to extenuate offences at the bar of your lordships, have been so much abused as they have been upon this occasion; there has been much inveteracy and rancour shewn against the prosecutor; instead of palliating or extenuating in any shape, or in any manner, so as to induce a conviction in the mind of any man, that conduct which was the result of provocation, or human infirmity. At this moment the affidavits at your bar are the affidavits of gentlemen approving that conduct, and not only approving of, but justifying the crime, for which the defendant stands here for your lordships judgment, not to palliate his offence, but to treat it with exultation.

At this moment I shall be warranted in desiring your lordship to forget a little the laws of chivalry, which have been dealt out to us very plentifully,

plentifully, to follow a little the law of England, to resist the violence which has been attempted to be supported with so high a hand as this is.—If I am not deceived in the affidavit of Webber, from what I can collect he stands in a situation, in a more criminal point of view before the court, than the criminal now receiving his judgment, and as to that Mr. Webber, I desire of your lordship some animadversion may fall on that gentleman, perhaps some of the officers of the corps may hear it.

Lord Mansfield. What is Webber?

Mr. Lawe. He is a Captain of Marines—I observe he approves of his conduct—he is privy to the sending of the letter—and he supplies him with a sword, and after full notice of what was said and done.

Lord Mansfield. He is privy when he goes to assault him at Bath.

Mr. Lawe. He says from his disposition, and behaving in such manner, he could safely be abandoned to the guidance of his own judgment—that was respecting this gentleman's conduct at Bath—he says it was entirely consistent with the rules of propriety as a gentleman and an officer.

Your lordship will permit me to go somewhat in the order of proceedings, stating insult by one gentleman,

♦ In corroboration of Captain Webber's testimony, Mr. Bourne, with the permission of Colonel Heathcote, prints the following extract from his letter.

The relation you gave me of the very outrageous and insulting behaviour of Sir James Wallace to you while under his command on board a ship, sufficiently justified, in my opinion, the resentment you shewed of it at Bath, nor could I discover from any conversation I had with you, relative to Sir James, that you entertained the least dishonourable view or intention towards him, but that it was rather your wish to act in every thing concerning him with propriety and honor, and I am happy to add, that upon all other occasions you appeared as far as my knowledge went, to conduct yourself properly, and like a gentleman—to this I very willingly subscribe my name.

J. HEATHCOTE.

gentleman, and the honor of the other gentleman. It is stated as a personal outrage committed by Sir James Wallace upon Mr. Bourne, who is represented as a man groaning under the weight of authority.

God forbid I should stand here as an advocate for the abuse of authority. I stand here upon the part of Sir James Wallace, who prosecutes, in this case, the defendant, who is to be taught the duty of subordination, which he seems to have learned a very ill lesson of, in whatever military school he has been educated, he must be taught by the sober and wholesome chastisement of this court.*

In the first instance, he begins with what I should have thought indecent almost to have mentioned, with a little private foolish quarrel that happened upon Whitehall-stairs, between Sir James Wallace and another person—a man that begins with that little incident is much more likely to be the aggressor of the disputes than Sir James Wallace was, who seems to have obliterated all those impressions, if he had received any against him when he came on board his ship. He receives him with kindness in the first instance, giving him leave to go to town upon his necessary occasions; he overlooks the palpable extraordinary absence, and at Madeira he rather treats him with distinguished favor than marks of persecution.

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* Gentlemen of the bar, I am told, set up a prescription for abuse, under pretence that speaking from their brief they are not answerable for illiberality; this may be a *legal* excuse, and sufficient to protect them from prosecutions, but it is a mean one, and cannot protect them from the censure of mankind. The robe of declamation may give sanction to impertinence, but it is strange that men who consider themselves members of a liberal profession, and who from education might be supposed to have imbibed generous principles, should degenerate into the baseness of gross personalities.

As to the difference about the affray on Whitehall-stairs, I think Mr. Murphy's letter—I don't know whether it has met your lordships ear yet, is a complete answer.

Lord Mansfield. It was read.

Mr. Lawe. He there states Sir James Wallace's goodness, and the great degree of esteem he had for him.

With respect to the orders of Sir James Wallace at the island of Madeira, if they were strict in requiring the officers to be on board in the evening, it seems to me to be justified in strictness, for the safety of his majesty's ship under his command, and who is to reproach him for that, but the very gentleman in whose single instance he relaxes it. When Mr. Bourne and Mr. Markett dine at the Consuls, they take an opportunity in the moment of hilarity and conversation, when it is thought too much to refuse it, to request leave to stay on shore—they apply to Sir James Wallace, when he was not willing to mortify them—I speak from the affidavit before me. They used him shamefully, they do discredit to the British navy in that island—they not only stay beyond their time, but get into brawls at the play-house. They refuse to take off their hats in the Theatre, and they do something that disgraces them as gentlemen, which they were not warranted to do upon this occasion.* Certainly they merited some degree of reprobation from Sir James Wallace—does he when he hears of it reprobate them for it? They come on board as usual without reprobation—they might have appeared before him without restraint; but they seek

* For the falsity of this assertion see the affidavits of Lieutenants Markett, Monke, and Hodge, also of Mr. Richards, in the Appendix.

seek to affront Sir James Wallace with a voluntary insult—they send a letter in which Mr. Markett and Mr. Bourne chuse to thank him for his polite introduction to the Portuguese Governor.

This gentleman, one of the marine officers, Mr. Markett, is a witness for him, it is thought proper to have an eye witness of what passes, and I must observe throughout that both Sir James Wallace, when he is defending himself, chuses very properly to have witnesses for his conduct, as well as Mr. Bourne thought proper to have witnesses for his. In that event the public might have been saved the trouble they must now have, they might have had a friend who would have been more zealous to have settled it, and yet not so regardless of the public peace as Webber. Sir James Wallace sends for them in the presence of Major Varlo, and I beg leave to make one observation upon his testimony—he does not seem to be impeached on any side as a party, he seems to be the general mediator, applied to on both sides. His testimony comes out with as much respect and credibility as any witness upon this occasion can be supposed to be—he is present when Mr. Bourne and Mr. Markett are reprimanded for this letter—Sir James Wallace asks what do you mean by sending this letter?—saying the non-introduction of them to the Portuguese Governor occasioned insult to them—Sir James Wallace says, if you behave in this manner I don't chuse any further acquaintance with you.

After this there does not appear any marked insult to this gentleman, as he chuses to represent himself to be, but a number of inferior insults are said to be received by him.

He says Sir James often came to him in this
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menacing kind of way, holding a fist to his face, and threatening him with indignity.

One observation I will beg leave to make, is it not a misfortune, if this was the general tenor of Sir J. Wallace's conduct it should not have been observed by Major Varlo, one of the officers who was on board the ship, from the first to the last?—he never saw any of these instances—Mr. Bourne never communicates himself to Major Varlo upon it—never applied to him for redress and protection, if he had received such insults—but he speaks of a variety and a regular series of these insults.

I come now to the 24th of April, when the insult of the ward-room is stated. Mr. Bourne chuses to state upon that day Mr. Stephenson being much intoxicated with liquor, and coming, as he conceives from Sir James Wallace's cabin, and at the instance of Sir James Wallace, began to treat Mr. Bourne with rudeness, and at last ordered the lights to be put out; that is not to be accounted for upon the general conduct of Mr. Stephenson, or the principles of reason applied to Mr. Bourne at the time.

How does it stand upon the other witnesses account—Major Varlo, Mr. Spry, Sir James Wallace, a Mr. Farris, all speak to this, that Mr. Stephenson was in the ward, or near it, not drunk, but in bed, waiting for the middle watch, that he was to go upon—he desired Mr. Bourne at the time, who was making a violent noise in his cabin, not to disturb him. Mr. Bourne made a violent noise, upon which he ordered the lights to be put out—Mr. Bourne sent a message with his respectful compliments, desiring to know if the lights were put out by his directions—immediately after the said message Sir James
sent

sent for him, and when he came there he finds Sir James Wallace, Mr. Spry, Mr. Varlo, the Surgeon, and Master of the ship—it is very fortunate that in this story, as told by Mr. Bourne, and in many other parts of the story, Mr. Bourne's recollection is so bad; the surgeon was not there, but ill in bed—the matter was less able to be there, he had lost his leg, and been disabled a long time after; therefore those persons were not there—those persons who were there have stated it in a way different from what Mr. Bourne has stated it, *

They state that Sir James Wallace did not appear to behave with improper temper, and not with the decorum of a proper officer. The message Mr. Bourne sent was not in the name of all the officers, as he asserts, but in his own name singly—Sir James Wallace says, why did you send a message to me to know why I ordered the lights to be put out? He told him he had given no such orders, and that he, Bourne, was a very troublesome man, and Mr. Bourne says that he then told him that at some proper time he should hear from him.

This in terms, in as proper terms as the English language can furnish, is denied by all of them.

It is very fortunate that to corroborate the evidence of all the others, Mr. Spry, who is an officer of the *Barfleur*, who came to town no longer ago than Friday, upon hearing this account, concurred entirely with the testimony of all the others†—His return was purely providential—

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* Ferris, who was appointed *acting master*, was the person alluded to by Mr. Bourne. See note on Ferris's affidavit in Appendix, and note on the same point in Mr. Sylvester's argument.

† Mr. Bourne does not deny but the arrival of Mr. Spry was a fortunate circumstance for Sir James Wallace, as he happily coincides with that gentleman in every thing. See the notes on Mr. Spry, and on his affidavit in Appendix.

he confirms the testimony, and removes the prejudice that might have been entertained—Mr. Stephenson is in the West Indies, or we should have had his testimony likewise.

It is stated by Mr. Bourne, that Mr. Stephenson the next morning made an apology to all the officers whom he had disturbed the night before, particularly Mr. Bourne, requesting his pardon—this fact I cannot deny but negatively.

Lord Mansfield. If the other facts are true you know the apology is impossible.

Mr. Lawe. If it had happened it must have been of such a public nature in the ship, it could not have escaped notice.

The next morning Mr. Bourne says Sir James Wallace came upon deck with his eyes flashing fire, with his fists clenched in Bourne's face, and walking about the deck like a maniac, and then he gave his orders that he should not walk upon the quarter-deck. This is Mr. Bourne's account. It is material to know upon which side of the deck they were. Sir James was walking then upon the larboard side, and Mr. Bourne upon the starboard—that Mr. Bourne crossed over, as it appeared to them, with a view to insult Sir James Wallace—that he walked in a swaggering, menacing kind of a way, staring him in his face, throwing his arms about to prevent his passing along, that Sir James Wallace was obliged to get out of Mr. Bourne's way, by getting upon the midship, where there is a little rise in the ship.

One of the witnesses says he was so near Sir J. Wallace, that if he had muttered any such thing he must have heard it, and that no such words passed, and he declares the injury, if there was any, was by Mr. Bourne's coming out of his way

to meet Sir James Wallace—all that fell from Sir James Wallace was a very temperate rebuke, and for this intemperate behaviour he called for his lieutenant, and said my orders are, Mr. Bourne does not walk with me.*

If this is an injury, and if this intitled him to seek and hunt through all created space for this gentleman, it is that kind of sense of honor, which I, untutored in the schools of honor, am not very able to conceive.

I will not wander through the remains of the facts, which are so fully contradicted.

Lord Mansfield. The facts have all been gone through.

Mr. Lawe. In short, what happened at Jamaica your Lordship will recollect the circumstances of. Mr. Sylvester stated before that Mr. Bourne talks of a three weeks tyranny being exercised over him—It was but six days that elapsed between the 24th of April and the 30th, the day of their arrival at Jamaica†—As to the instance of waiting for him in the dusk of the evening, rushing out of a negro hut, shewing his hand upon his sword ready to fight him, and that Sir James Wallace refused him.

All Sir James Wallace says upon that head he never did challenge him; but if he did not challenge him, with all my heart, I am not so zealous for it to be believed he did challenge him—Let him feel the smart of it, Sir James Wallace feels different upon that subject from what I do. All the miseries that happened on board that ship on board of which he failed—I don't mean to impute any

* See the affidavits of Lieutenant Monke, who was officer of the watch, and of Mr. Bourne, stating this fact, in the Appendix.

† It was ten days after the *Warrior's* arrival at Port-Royal that Mr. Bourne was removed from his oppressed situation on board that ship to *Le Hector*.

any want of the spirit of an officer in this gentleman, but he is full of spleen and malice to his fellow creature, and all that which is locked up in his breast he threw upon Sir James Wallace when occasion threw him in his way—Occasion he did not wait for, he sought him at Bath—he sent a waiter to him, the affidavit of which waiter your lordship has heard.

I will only observe upon one thing more, which is the circumstance of the manner in which that challenge was continued. The invective contained in those letters was sent to him with a view to provoke Sir James Wallace to meet him—as soon as he had sent the note, he retires to an apartment, and places a sword which had been supplied by Mr. Webber, with a pair of pistols, upon the table, and tells the waiter, if Sir James comes, to shew him them*—Was it meant that that was to be an honourable combat, it looks infinitely more like that offence which the first count of the indictment was calculated to meet, which in my opinion should still have stood †. The endeavour to encounter in private—the sending for him to the Inn—having this sword and these pistols by himself, without the intervention of one witness, and unanimously conveys the idea laid in the first count of the indictment—Sir James Wallace did not chuse to attend upon an anonymous summons; at last, the gentleman sent word his name was Bourne—He chose to abstain from going, but conceiving the disposition of Mr. Bourne towards him, warrant-

* See Mr. Bourne's last affidavit, positively denying this assertion.

† Here we must take Mr. Lawe's expression *literally*, and conclude he is "untutored in the school of honour," and indeed of humanity, or could never have forced out of this fact, supposing it truly stated, which it is not, so diabolical a construction as an intent to murder

ed him in all prudent caution—he puts his pistols in his pocket, with no disposition to commit illegal violence, there is hardly any man of prudence but would have done as he did—He met him, and he holds up a cane over his head—Sir James Wallace presents his pistol to preserve himself from it.

There is not only looseness but incorrectness, when Mr. Bourne tells the same story about what happened. He says, I struck him at Bath, and caned him, and upon being told Mr. Davis was an eye-witness, and saw the whole—he then says I did not strike him, and he declared he would not strike him from motives of personal prudence—But then he adds, what do you call not striking—I held my cane over his head, and hit his hat—I don't know what they call not striking him—He admits he had not, after he tells him he had.

There are in schools of honor different ideas of honor and justice than what we ordinary men entertain of them.

I have done with all the insults and personal outrage—I will only answer this observation of Mr. Solicitor General's and Mr. Erskine's, as to our being the aggressor.

If your lordship has attended to the affidavit of Mr. Abbot.

Lord Mansfield. I can tell you what it contains—He told him he would print it in the Papers.

Mr. Lawe. Yes.

Lord Mansfield. Then you see I have attended to it.

Mr. Lawe. Your lordship will recollect better than I, he told my lord Cork the same, that if he did not fight him upon the challenge, that he
would

would send him, he certainly would put all the letters in the papers; then after that, to whom could Sir James Wallace impute the paragraph that appeared in the papers, to whom could any body impute such a thing, but to the man who threatned he would publish—Sir James Wallace did impute it to him, and in consequence of that suspicion that arose in his mind upon the subject, did publish the letter subject to such reprobation. But says the Solicitor General, if such a letter had been published by him, it would have justified him as a man, though not standing at your lordship's bar as a criminal—it would have justified him if he had committed murder. He himself descends to this litigation in the news-papers, and at a long distance of time afterwards, when he knew there was a prosecution for that very libel before the court, and knew he would have had full and ample hearing upon it*, he then fell upon him, and treated him in such a manner has been proved upon the trial. As to giving him a blow, a slight one would have answered the purpose to have stigmatized him; he did not content himself with that, for he gave him very violent blows, which impresses me very strongly with an idea he meant something more than merely to stigmatize him†.

* By what means was Mr. Bourne to know this? There were no steps whatsoever taken against him, and the term was nearly ended, and he had no notice.

† Mr. Coombe in his affidavit declares, that Mr. Bourne gave Sir James Wallace but one blow with a slight cane, before Sir James struck at Mr. Bourne; and also that it was not Mr. Coombe's opinion that Mr. B. would have repeated it, had he not been induced so to do by Sir James Wallace. Mr. B's affidavit declares the same, and Sir James Wallace, on the trial, acknowledged there was a cudgelling between them.

This gentleman, it seems, bore a good character when on board the ship called the Iris, and it is much to be pitied and lamented, that a gentleman who had served on board the Warrior, and exhausted all his good nature in those vessels, should, as stated by Mr. Ferris, the moment he came on board, be the firebrand and destruction of their peace, that he endeavoured to sink the commander in the estimation of them all. This gentleman has not yet completed his insolence to the court, and I do beg your lordship to permit me to state something, which Mr. Solicitor General has upon this, as well as other occasions stated, and which Mr. Erskine has alluded to, which is, the approbation of all the marine corps.

Lord Mansfield. You need not go to that.

Mr. Lawe. That constitutes a very aggravated part of the case.

Lord Mansfield. It is highly indecent—That is not the point, they give their opinion without knowing the cause.

Mr. Lawe. I conceive that a court of honor, I am happy in not being educated in that court.

Lord Mansfield. A court of honor don't hear one side only*.

Mr. Lawe. Those gentlemen that stand high in the estimation of their country, in their professional character, may think of their own honor, but I would not for the world set my hand to that foul pen, which has condemned an officer in a matter of discipline and honor, and without hearing that officer, and knowing that he had no defence; let them think of their honor as they may, I have different sentiments, and I am not ashamed of mine.

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* See note to the resolutions of the marine corps, in the Appendix.

If your lordship should think the matter urged in mitigation, instead of extenuating, aggravates and increases the crime. If you think the disorder endeavoured to be spread in this kingdom, worthy reprobation. If your lordship thinks the outrage on your dignity and authority, deserves some reparation, I hope in the punishment of this young man for these outrages, that he, and other unruly spirits, may know there is some force in the laws, and some vigour in the magistrates to execute them. I shall now take the liberty of saying something upon punishment; as there appears upon this occasion, so very numerous a body of candidates for their shares of merits, it may very fairly be inferred, these gentlemen will not be unwilling to participate in the punishment, and I beg leave to say, that such punishment can only be a pecuniary one, to which they could bear a part.

Mr. Adam. After your lordship's time and attention has been taken up almost five hours to the case before you, I should certainly abuse the judgment of the court, and do no material service to my client, Sir James Wallace, if I was to detain you with the detail of these extraordinary facts, and a minute detail of this singular history*, after what you have heard from the three learned gentlemen that have gone before me, with so much minuteness, and so much accuracy, and as much observation upon the subject as the subject merits—I shall therefore confine myself only to a few observations, from the nature of the case before your lordship, and to state to you any particular fact, I think they might not have brought fully forward.

I will

* The singularity of the history Mr. Bourne must admit, for this is the first time, perhaps, that the captain of a man of war, delegated the vindication of his honor to the subtlety of a law pleader.

I will beg leave to state to your lordship, in the situation in which you are now, you are perhaps more singularly circumstanced in this particular case, in superintending over the peace of the country, than you ever was at any former period, for that has been brought into notice, and discussed before your lordship, which ought not to have been brought before your lordship. At the same time as the honor of the one man has been mentioned in the most emphatic terms, by the defendant's counsel, it would be improper and imprudent upon my part, and unjust to Sir James Wallace, whose honor stands recorded, whose military behavior stands exalted almost beyond any that this country knows, which country has been benefited by his service, in defence of which, he has spilt his dearest blood. I say, my lord, it would be unjust to suggest, that Sir James Wallace, who stands possessed of all that bravery, should not have the same sense of honor, and that it should be told to the court by the gentlemen upon the other side of the question, that Sir James Wallace's sense of honor was not equal to Mr. Bourne's; upon the part of Sir James Wallace, it is my duty to state, that Sir James Wallace was ready upon every occasion to meet him in any way that was proper, but he never came to him like a gentleman*.

If I was not to state that to the court, I should betray the cause of my client, I should betray this man, that stands as high in the estimation of his country, as the first naval character in the kingdom. Mr. Erskine has said, that if any person had treated him in the same man-

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* See the affidavits of Captain Green, Lieutenant Peacock, Mr. Wier, Mr. Brookin, &c. &c. in the Appendix.

ner that Sir James Wallace has treated Mr. Bourne, he should have followed Sir James Wallace through the whole creation of matter. Knowing his sentiments of honor, and Mr. Erskine's feelings, I know he would have done so, but he would not have come out of a Negroe-but in the dusk of the evening to Sir James Wallace—He would not have sent a waiter to Sir James Wallace with an anonymous message, that a gentleman wanted to speak to him, and previous to his coming, have told the waiter to direct Sir James Wallace to come to a dark room in a tavern—He would not have done that, but like a man of honor would have done it in the open face of the day, to have preserved that honor, which has been proved with so much energy, to be dearer to any man than being subject to the punishment inflicted by the laws of the country for a violation of the peace.

I cannot help feeling warm when I find every species of the disobedience of the orders of Sir James Wallace, for the reprobation of which Sir James Wallace has drawn upon him the resentment of Lieutenant Bourne. Mr. Bearcroft has traced the cause with minuteness, which makes it improper for me to dwell upon the circumstances, from the very period when Mr. Bourne came on board, down to the period of their arriving at Jamaica, when Lord Rodney refusing the court-martial, separated him from that man, whom Lord Rodney might well be supposed to have known he had behaved improperly to.

There is one material thing I shall observe upon, which is, there is not the least resentment shewn by Sir James Wallace in the first instance, nor the second, but it is over-looked; at last he sends

sends him an insulting card, and not till then does Sir James Wallacê say any thing to him in anger, and then there was no flashing of eyes, no clenching of fists, but calmly, deliberately, almost putting a restraint upon his own nature, and the nature of every brave man. Sir James told him, he could no longer hold any communication nor have any acquaintance with Mr. Bourne. Upon the second insult, after the insult of the ward-room, what was the consequence? There is a positive affidavit, strengthened extremely by the circumstances which have been mentioned, the master should have been present, who is said to have been present with Sir James Wallace, was in bed, having lost his leg, which was shot off in the action of the twelfth of April*. There is another circumstance which is not mentioned, which is the circumstance respecting Lieutenant Markett's affidavit, who particularly praises Mr. Bourne's character, and talks of his conduct upon the twelfth of April—I mention this as a circumstance tending to support the veracity of our affidavits, and destroy the credibility of theirs; I don't mean to impeach the readiness of Mr. Bourne to do his duty, or his courage, or what he performed on the twelfth of April, but I mean to apply it to the credibility of their affidavits†.

What is the case? Lieutenant Markett states, that he saw Mr. Bourne act that day with the greatest ability and courage, the fact is, that day Mr. Markett was under arrest upon account of bad behaviour on the 9th of April, three days before;

* See the notes on this point to the other arguments, and the notes on Ferris's affidavit.

† What does Mr. Adam mean? Does he mean that Mr. Markett's approbation of his friend Bourne's conduct, is an impeachment to his credibility? Is approbation a source of perjury?

before ; and another circumstance, if he had not been under arrest, as I am informed by men of the profession, his station is upon the poop, and Lieutenant Bourne's in another part of the ship.

Lord Mansfield. How does it appear he was under arrest.

Mr. Adam. It appears upon the affidavits.

Mr. Larve. He is in fact suspended at this moment*.

Mr. Adam. That only makes my argument the stronger—I am now informed by Mr. Erskine, who knows more of naval affairs than I do, if Mr. Markett had been under arrest, he might have been in any part of the ship he pleased, and if not, he must have been upon his station, which makes it impossible he could have seen Mr. Bourne, which enables me to state the case more strong on the credibility of our affidavits, against the credibility of their affidavits. In short, I find myself, in the whole of this business, extremely desirous at the same time not to injure the point of honor which has been talked of, but to bring a person to justice and punishment, or more properly to bring forward the fair and honorable character of Sir James Wallace, that it is impossible for me not to detain your lordships a few moments longer.

I shall beg leave to state to you some circumstances in regard to the letter of Sir James Wallace, which was not stated by the learned gentlemen before me. I am perfectly convinced, by stating this single circumstance, I shall totally take off the effect my learned friends may have made upon the mind of the court, with regard to the impropriety of Sir James Wallace's conduct in that respect. The fact is, there is a letter

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* This is a false assertion.

ter in Mr. Bourne's own deliberate hand-writings for Mr. Bourne, in his letter of the 7th of December, at Bath, in 1782, writes to Sir James Wallace, he should expose him in the public prints; upon the 15th December the publication appears in the Morning Herald; upon the 20th Sir James Wallace's letter appears, and upon the 23d the libel, upon which Mr. Bourne stands convicted by not appearing.—Is not this the strongest reason in the world for Sir James Wallace to have supposed, Mr. Bourne's written letter in his possession, that Mr. Bourne was the author of this anonymous publication in the Morning Herald—Will any man pretend to say, a man of nice feelings, which Sir James, as a military man is, from the intercourse I have had with him I know he is—Is it possible for him to feel any thing more pungent than public abuse.—Was it not very natural for Sir James Wallace at once to fly to the public, to endeavour to vindicate himself before that public, before whom he was accused, and was it not natural, he should, with this letter in his pocket, accuse Mr. Bourne as the author of that scandalous publication. That circumstance alone is sufficient to take away that effect, which is supposed to be brought against my client, owing to that circumstance of his having been accused of appealing to the public papers.

As to the libel, the history of the last war, and in short, Sir James Wallace's whole life, is a most complete and positive denial to the assertions of that libel, and if the falseness of the libel is to aggravate the crime, and increase the guilt, Mr. Bourne stands as the most atrocious offender of any man, in any situation or capacity of life.

In regard to the circumstance of the assault, a great deal has fallen out upon that subject—If Mr. Bourne had had no other idea but that of getting

getting Sir James Wallace to settle it in a manner the courts of law dare not take cognizance of, and which I am almost ashamed again to state to your lordship—If Mr. Bourne had deserved that—The Solicitor General has told us, that there are circumstances, by which a man of honor is more affected than by corporal pain, a ~~fillip~~ ^{blow} on the nose is much more likely to bring about that end—Mr. Bourne was so much exasperated in his mind, which made it totally improper for Sir James Wallace to meet him—Had not his conduct at Jamaica made it appear so? And it appears to be much aggravated by sending that challenge which he did at Bath—I shall add only one circumstance, which is, with regard to the motives which induced Sir James Wallace to come into a court of justice, and that is the resolutions of the marine corps, that Sir James Wallace had done a thing which was totally improper, utterly improper, by bringing this matter before a court of justice, and it was hinted at, though not properly said, by my learned friend, who opened this business, that his motives were vindictive*. I will venture to say, not only from all I know of Sir James Wallace, personally, but from all that appears upon the face of this case, that there is no reason whatever to suppose, that he had vindiction in the measures he has taken. Sir James felt himself aggrieved and insulted by lies, which were told of him in every coffee-house and news-paper, he was refused to have that matter tried by a court-martial by the admiralty, it was not tried, for what reason I don't know; the time had not expired.

Lord Mansfield. That is the reason given, the time had expired. *Mr.*

* How could Sir James Wallace's conduct be governed by the resolutions of the marine corps, when it is evident from the date, as well as subject of the resolutions, they were agreed to subsequent to the prosecution.

Mr. Adam. I believe Sir James Wallace applied for a court-martial within the time of the act of parliament to appoint a court-martial—The limits of the time, if I recollect, is one year after the return home. If it is not one year, it is more than one year—Finding himself barred in this method, what other opportunity had he of bringing it before the world, but by the means which he has taken.

My lord, I will venture to detain your lordship one moment, with a few words, which are much more emphatical, and much better expressed than any thing I can state to your lordship. I will state the words of Lord Chief Justice Scroggs, against whom several libels were published in 1675, he said, in his speech upon that subject, in this court, “first, I would have all men know, I am not of so revengeful a nature, or so nettled at aspersion, but I would pass by this and more, but so much has passed, which reflects, to transpose the words upon *the subordination of the navy*, as well upon my private character, it is my place to defend the one, and a duty I owe to my reputation to vindicate the other.—These words of Lord Chief Justice Scroggs are applicable to Sir James Wallace*.

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* The learned barrister, I presume, having found the arguments in aggravation exhausted, by the ingenuity of those who preceded him, turned into the road of retrospection, and travelled so far backwards as the year 1675, for new matter. He thought it better, perhaps, to cite any case than no case; but it is rather surprizing how he could be induced to bring into junction, two characters so incongruous, taking them in the abstract, as a lord chief justice of the King's-bench, and a captain of a man of war. Where lies the similitude between Sir James Wallace and chief justice Scroggs? Is it possible that the chief justice, in his professional line, could adopt the language of Sir James Wallace, could call one of the puisne judges a scoundrel, or clench his fists at him with a damn, or cry out to the marshal of the court, “it is my orders, that judge Nokes, or judge Stiles, judge Doe, or judge Roe,” which ever of them might have offended him, “shall not sit on the same side of the bench with me.” Surely it is not; and yet Mr. Adam, by a kind of legerde-

I shall only add further, to convince the world, vindiction has no hand in this business, but merely a justification of Sir James Wallace in the eyes of the world; if Sir James Wallace had been inclined to have brought an action instead of an indictment in this case, it is probable, an English jury, feeling for the injury done to Sir James Wallace, who has served his country so bravely, and been hurt by so daring an assault, as was made upon him, it is but natural to suppose, that jury would have vindicated the rights of Sir James Wallace, by such damages as Mr. Bourne could not have answered for*. If any other motive than his justification required it, it would have been easy for Sir James Wallace to have taken that line. But if he had taken it he would have dishonoured himself, as he says, but by taking this line, he has done no more than what is necessary for every man for the reparation of his honor. He finds the conduct of that individual with whom he must combat,

main, a novel species of hocus-pocus logic, beyond any other instance of law-fiction, introduces the subordination of the navy into a court of law; divests Sir James Wallace of his naval uniform, unbuckles his sword, strips him of his military character, and cloathing him in purple and ermine, and covering his head with a tremendous perriwig and black patch, he places him upon the bench of justice, arguing for his reputation in the words of lord chief justice Scroggs. It is not possible to be serious upon this point of ludicrous comparison; the cases are not at all analogous. By Mr. Adam's statement, poor Scroggs had been repeatedly libelled, whereas one publication only, appeared against Sir James Wallace, and that he brought upon himself, as his leading counsel admitted, by being the original libeller.—The navy and the army will however thank Sir James, for stating by his legal second a law precedent of an hundred years old, to shew them, that when their "reputations" are attacked, it is their "duty" not to draw their swords in its "vindication," but to apply to a solicitor to draw his pen, and instead of going into the field, meet their opponents, challenge by indictment, and fight them at the point of an affidavit, in Westminster-hall.

* It is more likely that an English jury would have considered the provocation and the dispute was between two men, professing the character of soldiers; and that instead of giving large damages, they would have followed the example recently set them by a jury in Yorkshire, who gave but two-pence damages against a gentleman of the bar, for knocking two teeth out of a fellow's head who gave him the lie.

combat, in point of honor, such, as to make it almost too dangerous for him to enter into that situation with him, so as to maintain it by that means, which the laws of honor have laid down.

Mr. Solicitor-General in Reply.

My lord, in this late hour in the day, it cannot be expected I should go very minutely into the circumstances stated by my learned friends. I shall not do it, though I hastily looked over the affidavits which have been read, not being able to hear one word of them from the officer, I trust, if I do not perfectly mistake it, all my learned friends have endeavoured to avail themselves of a great number, I suppose, and I dare say, actual contradictions, and even if they were true, I should not have expressed myself with all that strength of language which my learned friends have done. They do not appear to have made much impression upon me.

In the first place let us see whether in the nature of the thing it is possible, that my client's case, considered as a matter of fact, is either contradicted, or can be materially contradicted.

Now let us see what this fact is; the fact alledged against Sir James Wallace upon the part of Mr. Bourne, is, that in the use of his authority, he has commanded over him, and treated him with great rudeness, incivility and oppression; he states the circumstances in which that rudeness and oppression consists—He says, he had all the appearances of a man in a fury; that his action and gesture the most affronting, that his language and his conduct upon it, were most illiberal, and in this

he is confirmed in so many words, by the only witness who was present, that is, Lieutenant Monke, who sits here in court, uncontradicted by any body, and incapable of being contradicted by any body, for no body else was there as a witness. I am putting the case of Sir James Wallace and Mr. Bourne, as a case of witnesses contradicting one another, and concerning whose testimony your lordship must decide—Lieutenant Monke states, that no mortal man, (and your lordship must hold Mr. Monke and Mr. Bourne to be perjured if it is not true) that no mortal man could help feeling for such great insult, injury and oppression--(When he comes to Jamaica--Your lordships must not suppose we are in a land of fairies, and men are speaking of things that don't happen in human experience) This gentleman applies to Lord Rodney, for a court-martial upon the particular articles of war, which expressly refer to cruelty, oppression, and un-officerlike conduct. He demands that reparation, he feels himself insulted from people there—He feels he is insulted and degraded, and he acts accordingly.

I will ask, upon the face of the transaction, which is the most likely, for Mr. Sylvester, and Mr. Lawe, and particularly Mr. Adam in more general language, seem to take it for granted, this is all fiction and invention, which if it be true, Mr. Bourne's conduct is totally inconsistent with every thing that has happened in the world. Would any man think, that he would require a court-martial upon any thing that was not indecent or improper, and only for saying you shall not walk with me, for that is all which the gentlemen say, Sir James Wallace said.

It is a very incredible story, an exceeding incredible story, that for this Mr. Bourne should

should go and demand a court martial upon him; besides this, Major Varlo, and all the rest in their affidavits, acknowledge this is totally inconsistent with their case, but it is not so with ours, for from that moment the gentleman felt himself degraded and sunk, he spoke of himself as a prisoner from that very moment, and he says so himself, and Mr. Monke, who was present at the time, tallies with the account, which is totally irreconcilable with the recollection I have. I don't think proper to use the language gentlemen upon the other side have thought proper to use; Mr. Bourne, if he has such feelings as I have given him credit for, must have suffered much more from the language he has heard this day than any thing that has been done before.

He has been represented by several of the learned gentlemen as not only making an affidavit with not a word of truth in it, but as a person never to be kept company with by any man from this moment, so long as he lives!—A very pretty predicament he is in!—Had he acted otherwise he is to be expelled all human society, and having acted so he is to be expelled it likewise.

Your lordship will see when you have compared the affidavits in abundance of instances, not only having credibility, plain reasoning, and facts upon his side, but he is confirmed by many witnesses, whose credit your lordship is to decide upon, as well as those that have contradicted him.

In my opinion there is an affectation of treating this case, as totally contrary to the real merits of it with a certain species of anachronism, confounding all ideas of times, by which it seems Mr. Bourne is supposed to be a very great aggressor—Sir James Wallace not at all.

Let

Let us see what he comes to receive judgment for: he is called up to receive judgment for a libel published on the 23d of December, and he is called up for an assault which happened after that period.

Now let us see what was the situation of Lieutenant Bourne at the time of each of these offences—I am bound to consider them as offences, when each of them were committed? My Lord, at the time a libel was published, as it is called, it is admitted now before your lordship, to have been published to the world by this letter, under the signature of Sir James himself, wherein he says Mr. Bourne is a vain boaster, and a notorious liar—I don't mean to say those are the exact words, but false assertions seem to me to mean the same thing—a vain boaster and a notorious falsifier, if they like that word the better, and a man who gives himself an air of having assumed the conage of a gentleman, without any pretence or foundation in fact.

That is the fact published by Sir James Wallace.

My learned friends say this for him, and it is very differently argued by the different gentlemen—Mr. Bearcroft says, why I am ashamed of his having done so, and he is ashamed of himself, but he did it in a fit of irritation.

Now, says my learned friend behind me, why he did wrong certainly, but he thought he was doing right—He thought so, he made a small mistake—He thought he was repelling the injury of Lieutenant Bourne, and the truth is, they admit no injury had been committed by Lieutenant Bourne, but he thought so, and he had reason to think so, for Lieutenant Bourne had sent him several
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veral challenges, they will not admit messages, there were several civil messages at last, one in which he had given him notice he would print something; Sir James Wallace seeing something in print, jumped to the conclusion that Mr. Bourne was the author of this libel—What then, is Sir James Wallace to abuse my client, and hurt him in the tenderest point, and afterwards to say in this court, I formed a wrong judgment, I conceived Mr. Bourne was the libeller, and I chose to turn libeller myself—Now I don't think so, but now that I know I libelled him, and he not me, I may prosecute him still as the libeller, for I have got him to be a libeller, though he was not one before, *aut inveniam aut faciam*, is the language of Sir James Wallace, I have wrote such a paper upon him as would have moved the apathy of a stone, if his heart was as stoney as a flint, it would have drawn out of it these words of resentment and anger which you read in this paper.

Who has been the libeller?—I do say with great deference upon this head, I am not at all appalled by all that I have heard from my learned friends upon the subject—It is now an admitted fact, that before Mr. Bourne had published a word or line upon Sir James Wallace, he had attacked him as a man destitute of courage, who still boasted of courage, and a man that expressed his willingness to fight Sir James Wallace, tho' I can demonstrate, says Sir James, I was ready for him at Jamaica, Bath, and London, he was a pretender, and whoever takes him to be a man of that spirit and character, he is a liar and mistaken. Mr. Bearcroft, with great candour said as to the matter of libelling, I do think it is an answer to the charge of a libel.

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My learned friends behind me seem to think it quite a different thing—Says Mr. Adam and Mr. Lawe, as Sir James Wallace thought Mr. Bourne the author, though he was not, he had a right to treat him as the author, and he did what was perfectly justifiable.

I have no conception of the argument, Sir James Wallace himself don't admit it—there is no pretence of evidence, Mr. Bourne provoked or caused it—there is nobody will swear there was the least privy in Mr. Bourne to that which Sir James Wallace now alledges to be the provocation.

Then he is the aggressor, and of the utmost importance and magnitude to this man—I said it before, and I say it again, your lordship must know it, whether these opinions are correct or incorrect; it was impossible for Mr. Bourne to live in England in his station, published by a man of Sir James Wallace's character, to be a coward of this rank. It is not for me, I will not follow the example of my learned friends, by traducing the character of Sir James Wallace, as they have Mr. Bourne's—I said before, I know nothing of his character; he may be very illustrious, I have heard a great deal of commendation of him and nothing of reproach; it is not my interest to pull down Sir James Wallace—a shaft thus envenomed out of such a quiver, will do double execution, whether it comes from Sir James Wallace's mouth, or a mate, or a common man on board the ship it is very different, he might have affected to have despised it, but he could not despise this, coming from such a quarter, and signed by his name—It was a call upon him, and in my apprehension,

apprehension there is not a man living that would not have said, he is numbered with the dead if he don't answer it; and I am sure, addressing your lordship, I don't mean to lay down any thing contrary to the strictest rules of justice—I might say, ye prudes in virtue, what would you have done?—You could not have done any thing else.

I consider this assault of Sir James Wallace, as my client considered it undoubtedly—This paper, published by Sir James Wallace, is an experimental crisis—I am published to mankind as a poor, miserable, contemptuous man—I must acquit and clear myself of this imputation—live or die. My learned friend calls this a high hand of violence, that calls for the chastisement of this Court!—A high hand of violence!—I say it is what the law calls self-defence. A man cannot do that for his reputation, from a sense of honor that he can do to his little finger, or his little finger nail—This is the principle that obliged Mr. Bourne to do what he has done—says he, if I don't do that which shall leave Sir James Wallace no possibility of representing me as a man that declines personal combat, and so far deficient of personal courage, I cannot live any longer, therefore I do it, be it ever so irregular, it is in obedience to his call of reputation, and of spirit, and of honor, to which he has pleaded guilty.

Your lordship heard a great deal of that rudeness, indecency, and indelicacy and outrage upon the court, committed by reading a great number of affidavits—I will say a word or two upon this subject, because I am very sure no outrage upon the court was meant—I do not contend that all

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that cause of vengeance is exceedingly misplaced upon the persons that made the affidavits—with your lordships permission, I will spend a moment or two in shewing why—My lords, the grounds (says Mr. Bourne) why I did this is, that Sir J. Wallace has attacked me untruly, that is Mr. Bourne's case, for says he, he has shewn I declined to meet him, and that I never would come to the point—never would, What says Mr. Bourne to this, suppose it had happened in dialogue, as it must have done?—Why, Mr. Webber, you know something of this matter—Am I open to this representation, or am I not—You know what passed at Bath—have you any scruple to do that which is your duty—who if not innocent in the eye of the law, yet is not guilty in that sense that is imputed to him—Will you tell the court the truth, and how that was—I might be deficient in prudence—I might be deficient in reverence to the law, but was I deficient in point of personal courage, aye or no?—Why the gentleman ought to answer it—I may have been a particeps criminis with you in that which was not right, I might have paid more attention to the duty of a soldier than to the duty of a citizen, but I owe you the truth—every body must know how far it was calumny or truth, and in the course of a legal judicature, this man swears to a transaction in which he was a part—he states it, and swears to it—He states it correctly as it was—We live in strange times if this is supposed to be an offence against the rules of justice.

Lord Mansfield. He does not state the fact, but gives an opinion of fact—the court takes an opinion from nobody of fact, He gives his opinion in words upon the fact,

Mr.

Mr. Solicitor General. He declined, he says, to give him any advice upon the subject—He advises him to consult Colonel Heathcote, whom he does consult, and he declined for the same reason, and then he gives a general reason why Mr. Bourne acted with propriety and spirit, and as far as he could judge he could not do otherwise—Mr. Lawe attacked Capt. Webber, and said he goes with a challenge to Sir James Wallace. That he approves of the letter, and that he is a party to the challenge, and he abets this act. What is very material to this (as a mistake may happen) Sir James Wallace says at Bath he never would come to the point, and all this affidavit is made with a reference to this supposed libel, which puts Mr. Bourne's conduct in issue in this very business.—Says Mr. Bourne, don't you know Mr. Webber, right or wrong the truth must come out, ruat coelum. I may be censured as to this—The court of King's Bench said I wanted decorum, but they shall not say I was a coward, they shall not say it upon Sir James Wallace's evidence at Bath, or any were else—these witnesses know every step of my conduct, and every word I said and letter I wrote—this must not be permitted to go into the world without being explained, therefore tell us how it is.

I should be apt to suspect my own feelings upon it, but I think Mr. Bourne, knowing he has trespassed, and in what place, and to what degree, feeling he has a provocation, that no human being that sustained a character could possibly submit to—I think it was his duty, if the witnesses were living upon any habitable part of the earth, to bring them forth to say I may have many faults, passions, and errors, but I will

not be stained with the shame of a coward—that is all these affidavits are made to prove—that is the whole that these gentlemen were called upon to prove in this court—Your lordship will see it in every page of the affidavits, there is no pretence to impute it to any thing else—this man being charged with an offence so fatal to his reputation he publishes an account of all that passed, and he calls these witnesses that know every step of the transaction to prove it. That is the thing they are called upon for to give an account of what passed at Jamaica, Bath, and London.

Now, my lord, I do think I can, and I will rest the case with your lordship upon that single issue—Can your lordship say that Mr. Bourne has been too alert in provoking Sir James Wallace to personal combat? or has he been, as this paper and publication of Sir James not only insinuates but expresses in this flat way, tardy and pusillanimous in his character, and never would come to the point, either at Jamaica, Bath, or London.

All my learned friends go upon just the contrary idea, they justify Sir James Wallace in a great length of argument, for not condescending to meet this gentleman in single combat—Sir James Wallace disdains that sort of argument, non tali auxilio, says Sir James Wallace, you vastly mistake me, if you think I will avail myself of being the Captain of the ship, and he the Lieutenant of marines—I was always ready to meet him at Jamaica, Bath, Bristol, London, Asia, Africa, and America, always ready to meet him, and armed with a complete justification for the business—I wonder my learned friends did not lay their heads a little more together before they opened his defence, for this gentleman
makes

makes it his defence, I have proof of it—There was no time I was not ready to meet him.

The gentlemen say, what a cowardly thing was it to send to him to meet him in a dark room at Bath, and to come alone—Who invited him to come alone?—That is all fiction, Sir James Wallace might have brought his whole crew with him if he would—there was not the least hint of any thing like it—If the gentlemen had meant an assassination it was all wicked, and they are all responsible—There is not the least shadow of a proof of it—there is not the least excuse for Sir James Wallace, the publication of Sir James Wallace's calls upon Mr. Bourne to shew whether he was or not active in this business.

It says, I impute it to you that you was slack.—In answer to that imputation, Mr. Bourne was called upon to answer it—by calling upon him to answer one crime, Sir James Wallace obliged him to reveal another; in order to avoid the offence and imputation of cowardice—he obliged him to say perhaps, I have been more ready to meet Sir James Wallace than I ought to be. But you see he, Sir James Wallace, wanted to drive him, he said you ~~never will follow me~~—I went from town to town, and place to place and now there is an end of it I ~~will seek him no longer~~—I will wait for him no longer—I will publish him to all the world as a coward, for behaving in that abject manner.

This case your lordships have to decide—I have never said he was innocent—the situation of the case precludes me from any such thing—The degree of guilt your lordship is to find, and your lordship is to punish; but this I know, whenever this paper is read, and wherever it is read,

read, this case of Sir James Wallace's, eminent as he is, and the more for that eminence, every man of honor, every gentleman, every soldier, every living, ingenuous man will feel that that spirit of honor which is a vaulting principle, and cannot be restrained from trespassing the limits and bounds of decorum, when there is an imputation, that if it is not repelled it strikes a man out of every thing respectable and worthy in society that is to be maintained.

In that situation Mr. Bourne stands before your lordship. I hope he has done nothing that wise and good men might not have done, and would not have done in the same circumstances. That he has trespassed against the laws of his country, I am very ready to admit; but he did it with a degree of provocation not in his power, or the power of human prudence to prevent.

Lord Mansfield. Let him be committed we will look over the affidavits that are very voluminous—at present I will order him to be brought up again on Tuesday—There is one fact, I don't know that it will vary this case, there are a great deal of evidence that Bourne meant to fight Sir James Wallace, to send him a challenge, but I don't see any instance of his sending or giving a challenge to Sir James, appointing time or place, or where they might each have a second.

Mr. Justice Willes. Have you the paper of the 15th December, which Mr. Bourne denies publishing.

Lord Mansfield. I have the impression of it in my mind from one of the affidavits.

Mr. Justice Willes. When Sir James made his publication, he meant to answer that as coming from

from Mr. Bourne; now Mr. Bourne says it was published without his privity or knowledge.

Mr. Solicitor General. There is no dispute about that.

Lord Mansfield. We want the contents of the publication—there is a letter to Sir James Wallace from Bourne, saying he will print in the papers his letters which he sent to him, which letters to be sure contain every sort of abuse. He declares over and over again he will print them all in the papers, now we want to see the letter which he took to have come from Mr. Bourne.

Mr. Lawe. That is in the indictment.

Mr. Justice Willes. That letter of the 15th of December is not in the indictment.

Court adjourned this case to Tuesday the 8th instant.

TUESDAY, July 8th, 1783.

This day Lieutenant Bourne was brought into Court, attended by the Marshal, to receive judgment, when Mr. Justice Willes read the following Exordium and Judgment.

You, Charles Bourne, are brought up here to receive the judgment of this court for two offences.

For a violent assault upon Sir James Wallace, for which you was indicted, upon which indictment

ment you have been convicted, and for publishing a false and scandalous libel, upon which you have confessed and suffered judgment to go against you by default.*

I shall consider these charges separately, as they require, and they will receive very different judgments.

As to the assault it is a matter of serious and important consideration, as almost ever came before a court of justice. †

It was a cruel and wanton attack made by an officer in the land service upon an officer in the navy; ‡ it was a high insult offered by an inferior to a superior, preceded by a variety of other circumstances. § It was a quarrel which originated from an incident which happened during the time you was on board his majesty's ship the *Warrior*, under the actual command of Sir J. Wallace.*

This therefore is a case in which both the discipline of the army and navy are deeply concerned, and which will deeply affect that subordination which necessarily is due from persons under

* Mr. Bourne in suffering judgment to go against him by default, by no means intended to confess that he had been guilty of either *falsehood* or *scandal*; but merely the *simple fact* of publishing, and he finds in the letters of Junius, that the court of King's Bench consider *truth* as no justification in cases of libels, and that the simple fact of publishing being proved it is unnecessary to prove the *intent*, or to shew that the libel was *false or scandalous*.

† Mr. Bourne must here observe, that he was tried as a citizen for a breach of the common law, as a citizen he was convicted of a common assault upon a fellow citizen, and if the records of the courts are to be believed, many matters of equally serious and important consideration have come before them, though no such cruel and unusual punishment as that under which he suffers, can be shewn since the revolution.

‡ It has long been the boast of this country that the peasant and the squire are on a footing, when applying to the law for redress of grievances, and that the rank of persons was not to be considered in the distribution of justice. See Lord Mansfield's *dictum* in the case of Lord Grosvenor against the Duke of Cumberland.

§ The circumstances alluded to by the learned judge are what Mr. Bourne rests his justification on.

* It is clear from the affidavit of Mr. Murphy, in the Appendix, that the resentment on the part of Sir James Wallace originated in his quarrel with that gentleman at Whitehall.

under command to their commanders, and which must be inevitably preserved to keep up any order or authority whatsoever*.

The matters to be enquired into are, the nature of this assault, and the extenuation which has been offered upon your part to mitigate the offence. These have been of two sorts. The provocation you received from Sir James Wallace, and the supposed laws of honor, by which you were induced to become the avenger of your own wrong, in order to avoid what you call disgrace. False and chimerical notions of honor receive no countenance or indulgence from this court, it is contrary not only to the laws of God and humanity, but to the municipal laws of this, and every country throughout the globe.

I shall, in passing judgment upon your conduct before I finish it, consider you in the light of what is fashionably, though untruly, called a man of honor.

As a military man and a subject of discipline, you ought to know, it is the established rule during actual service, an inferior officer ought to be obedient to a superior officer, and must, without reserve, obey all his commands which respect the duty in which you are engaged†.

I understand likewise, and I have enquired of persons of great rank and knowledge in the military line, that after the service is ended, it is ge-

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nerally

* Had Mr. Bourne offended the rules of discipline, he would have been tried before a court-martial, which the legislature has vested with sufficient power to protect itself; but his conduct as a soldier was not reprehensible; it was as a citizen he offended against the common law, therefore he was tried at Westminster hall, where he however was not only punished for a breach of the peace, as a citizen, but as a soldier for a breach of military discipline.

† Mr. Bourne presumes that no part of his conduct could have induced the learned judge to think, that he was a stranger to this, or did not strictly obey it. Those he has served under have testified, that he never infringed his duty, by omission or transgression.

nerally conceived the superior is not to answer to the inferior for any act done by him as commander, for two reasons; if they were, no public service could be performed by persons that have the direction of it*.

For instance, could any general of any army, admiral of a fleet, or captain of a ship, go out upon any expedition, without having under his command, one or more violent, wrong-headed, intemperate young men, who in the heat of blood, may consider a reasonable order, justifying restraint, as a personal insult, and may construe a warm expression, the result of command of his superior, as an affront; that in the return from service they should be obliged to pursue them through all created space, to obtain satisfaction for this supposed insult†.

Sir James Wallace seems to stand pretty much in this situation, and if this extraordinary idea was to be encouraged, I know few that would wish to be entrusted with command.

The second reason is, there is another remedy at hand you might have had, without the least loss of honor, shadow of imputation, or tarnishing your courage. The inferior has a right, if the superior has misbehaved himself in command, to call him before a court-martial, and have his conduct enquired into.

The

* Mr. Bourne called upon Sir James Wallace, not as his superior officer, but as a private gentleman. When officers are not on duty they are peers, because they are gentlemen, and if a superior, shielding himself with his situation, forgets what he owes to his inferior in station, that inferior, as a gentleman, will, when from under his command, act as Mr. Bourne has acted, and as Mr. Bourne would again act under the same circumstances; chastize the tyrant for his insolence in office; and on this point will trust the decision of a court-martial.

† Does the learned judge mean to insinuate here, that a British officer should tacitly submit to the epithet, scoundrel, or that a clenched fist to his face, does not require an explanation, and is only a supposed insult.

The remedy you yourself applied for, and Sir George Rodney did not think it advisable to call a court-martial. He immediately so far redressed the grievance complained of, he removed you from under the command of Sir James Wallace, with whom you seemed not to be upon good terms*.

In weighing the sentence which is to be passed upon you, this court, having strongly impressed upon their minds, the ground of resentment against Sir James Wallace, which was a supposed affront received from him, while under his command, and for which you have ever since continually pursued him, with so much acrimonious and vindictive assiduity—If this supreme court of justice was, in the punishment to be inflicted upon you, to omit the consideration of this material part of your case, it might properly be objected to us, we were relaxing the discipline of the army, the navy, and of all due subordination amongst the military, in the punishment of a delinquent under your description†.

A regard must be had to obedience throughout the whole of the military establishment, and care taken to preserve it.

By the affidavits that have been read in court, your conduct as an officer has been endeavoured to be extenuated.

I shall now consider the nature of the assault, which, as proved by Sir James Wallace upon the trial, was a violent blow, given with a cane,

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which

* The learned judge has omitted to consider, or at least to state, that the admiralty refused a court-martial to Sir James Wallace, though, as appears by Mr. Adam's arguments, he applied in time.

† The military law is as fully invested with power to punish military delinquents, as the court of King's-bench is, to punish an offence against the civil law.

which cut through his hat and the leather of it, and stunned him; and so contused his head, which if it had fell upon the middle of it, might probably have killed him*.

This evidence is likewise confirmed by the evidence of Mr. Farquhar, the surgeon.

Was this the attack of a gentleman, wanting only the vindication of his honor? or was it not rather an act of violence, committed by a person lost to all sense of humanity. And this barbarous behaviour, was preceded by such impolite words as, you scoundrel; though Sir James Wallace had not given him the least provocation†.—In this part of the case I consider only this specific identical assault, of which you have been indicted and convicted.

When I come to your extenuation of this fact I shall have an opportunity of making my remarks upon every thing that led to it.

Considering the assault simply by itself, it was a most notorious violation of the peace; a blow given in the broad day, in the open street‡, by one gentleman to another; it was a caning, which, according to the laws of honor, no submission can expiate, and if the marks that were left, cannot be construed as an attempt to murder

* Mr. Bourne has been informed by an eminent anatomist, that the top of a man's head is the thickest part, and of course the least liable to material injury. The learned judge deals largely in probabilities, and aggravates the defendant's conduct, upon supposition; "if," says his lordship, "the blow had fell upon the middle of the head, it might probably have killed him; " he might as well have said, if it had been run into his eye, it might probably have blinded him, &c.

† This epithet, scoundrel, coming from Mr. Bourne, is considered as highly offensive, but in coming from Sir James Wallace, in open court, it was passed over without the slightest animadversion. See Mr. Mac Nally's arguments in extenuation.

‡ Does the learned judge think, that the chastisement of Sir James Wallace would have been a milder violation of the peace, had it been inflicted under the shade of night, in a narrow dark alley?

ther, still the dark and black design was but too visible*.

Can it be justified? No.—Your counsel did not begin to do it, till some of them with an improper zeal for your service, lost themselves in the ideas of chivalry, and adopted the chimeric notions of knight errants.

This brings me to what was offered in extenuation.—This involves me in such a quantity of affidavits, loaded with so many contradictions and falsehoods, I am afraid it will be with difficulty I shall extricate myself from it. I shall reduce them to several heads, and if I can, shall endeavour to draw truth out in its purity.

I pass over the affray between Sir James Wallace and Mr. Murphy, which happened in August 1781. In the account of which, you are pointedly contradicted by Sir James Wallace, and Mr. Sleigh, and to a degree, by Mr. Murphy's letter in September†. Indeed I see no cause of introduction of those epithets you made use of, unless it was to raise an idea that Sir James Wallace had entertained some prejudices against you before you came on board.

How is it supported? When you came on board the ship, at Portsmouth, you obtained leave to go to London for three days, though you stayed fifteen. Sir James Wallace winked at your conduct—You mentioned in your affidavit, your anxiety to get rid of a man, whose conduct had not impressed you with any favorable sentiments towards him, and you desired to change place with some other officer.

What

* Why does the learned judge urge such an intent, when Mr. Bearcroft fairly cleared the defendant from entertaining any such design.

† See Mr. Murphy's and John Jackson's affidavit.

What ground was there for this? Lieutenant Spry swears you frequently expressed to him, how exceedingly happy you was, in having been ordered on board Sir James Wallace's ship, and that you had the highest opinion of, and respect for him, and would not for any consideration have missed the chance of being ordered on board his ship*.

The subsequent charge shews there was no animosity subsisting between you till your arrival at Madeira, and though you suggest by your affidavit, several instances of outrage and unofficer-like behaviour, in your passage from London to Jamaica, you specify none, till you come to Madeira.

Your complaint afterwards may be reduced to three heads.—

First, Sir James Wallace not introducing you to the Governor of Madeira.

Secondly, His behaviour towards you, relative to the disturbance and putting out the lights in the ward-room, on the 23d of April.

Thirdly, His prohibition the next day, that you should not walk on the same side of the quarter-deck with him.

As to the first point, in not introducing you to the Governor of Madeira. what does your commanding officer (Varlo) say? You had no right to complain of this, as none of the other officers were introduced to the Governor. That Sir James introduced you, with the other officers, to the British Consul, Mr. Murray, where you dined. And what was your behaviour there? After you had

* See the affidavits of Lieutenants Monke, Markett, and Cribben, in Appendix. And it is to be remarked, that on this point the prosecutor's witnesses contradict each other, for some swear that the instant Mr. Bourne came on ship-board, he bred dissensions.

had obtained leave of Sir James Wallace, contrary to the general order, that all officers should come on board that night, you obtained leave to stay at Madeira that evening. How was Sir James Wallace's civility returned? You, and Lieutenant Markett, that has made an affidavit in your favor, behaved exceeding ill at the theatre, by refusing to pull off your hats that evening, in the presence of the Governor*.

Mr. Bourne. My lord, I deny that.

Mr. Justice Willes. Your conduct drew upon you, resentment at that place.—In fact, you disgraced your nation—You never returned to your ship till three days following—After three days absence, though your license was only to have stayed that night.

It does not appear Sir James Wallace would have taken notice of your disorderly behaviour, if it had not been for your ironical note, from yourself and Lieutenant Markett, in which you thank him, Sir James Wallace, for your polite introduction to the Governor of Madeira, you acknowledge the great civility of treatment you received from the inhabitants, which treatment, your own ill conduct drew upon yourself.

When Sir James Wallace understood you was come on board, he sent for you into his cabin, and gave you a slight reprimand, in the presence of your Major, Varlo, and Lieutenant Pry, and you made no apology for your improper conduct, nor seemed sensible of any fault.

You complain that he never asked you to eat, or dine at his table again, I believe very few officers would have acted otherwise than he did†.

Then

* See the affidavits of Lieutenant Markett, Monke, &c. denying this fact.

† Where did Mr. Bourne make this complaint? Has it appeared on the face of the affidavits? No. Did even the counsel of Sir James Wallace assert

Then upon the subject of the letter, Major Varlo expressed his surprize, and said, he could not consider it in any other light than as an intended insult.

These are the sentiments of your commanding officer upon the subject, and you were the more blameable for inducing Mr. Markett to join with you in the insult offered to the captain of the ship*.

Your disobedience of orders, and violent insult of your commanding officer, in his department as captain of the ship, had entirely drawn upon you the resentment of Sir James Wallace, and as this happened before the Warrior left Madeira, I don't wonder, afterwards, Sir James Wallace should be particularly attentive to your conduct.

In your voyage from Madeira to Jamaica, upon the 24th of April, between ten and eleven at night, a great noise and disturbance was heard in the ward-room, and a message sent up by you, to Sir James, to know if he had ordered the lights to be put out, which he had not, and he sent Mr. Spry, the first lieutenant, to enquire into it, who reported you had made a disturbance, which prevented lieutenant Stephenson from sleeping, who was to be upon the next watch, and that you had challenged him, upon which Sir James Wallace sent for you to his cabin, and, in the presence of Major Varlo, told you, you was a troublesome man.

It was a sentiment he might naturally entertain, and Major Varlo don't seem to disapprove of

sert it? No. Where then did this complaint originate? Or, who could communicate it to the learned judge?

* See Note on Mr. Sylvester's argument.

of it, he only says you went out of the cabin, muttering something to yourself.

In this business of ordering the candles in the ward-room to be put out, Sir James Wallace was totally unconcerned, and as to what you swear in your affidavit, that Lieutenant Stephenson came from Sir James Wallace's cabin to the ward-room, seemingly intoxicated with liquor; it is contradicted by Mr. Spry, Sir James Wallace, and others.

If this, happening at a late hour in the evening, and a disturbance happening on board the ship, is to be an excuse for that inveterate malignity which rancored in your breast ever since, I know not how the commander of a ship can with safety do his duty*.

What was this followed with? Upon the 25th April, when you were prohibited from walking on the same side of the deck with Sir James Wallace, the facts are differently related in the affidavits—After your behaviour on the preceding evening, you came up to Sir James Wallace, with an assuming air and gesture, and passed him in a manner which intended to convey an insult to him.

The captain of a ship must support his own dignity, and your assuming air and particular gesture, were not less contemptuous than words; but if the account given by yourself and Lieutenant Monke, of the behaviour of Sir James Wallace upon deck, are to be credited, Sir James Wallace's conduct was not entirely free from reprobation; but that is contradicted by Major Var-

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lo,

* If the learned judge means to imply, that the duty of a commander of a ship, consists in offering personal insults to a gentleman, Mr. Bourne agreed with him, that there may be considerable danger in the performance of it.

10, who, notwithstanding your saying you had been ill-used, and must consider yourself as a prisoner, does not interfere in your complaint or affair, or take you under protection, as he would have done, if he thought you had been ill-used.

If little petty squabbles between officers engaged in the service of their country, are not sufficient apologies or excuses for themselves, but that kind of rancour, hatred, and malice, must continue with which you fought the life of Sir James Wallace, I must repeat again and again, if a conduct of that sort from an inferior to a superior, was to be excused, and not severely punished—the service of this country could not be carried on, as a commander in chief would be in more danger from his own officers than from the enemy.

Now I come to the repeated injuries you have done to Sir James Wallace, to obtain satisfaction for these supposed affronts—in truth, I cannot conceive how they can be considered as extenuations of your crime—they appear to me as aggravations.

Your first accosting Sir James Wallace at Jamaica, upon the first of May, 1782, I consider as no challenge, but an opportunity you gave Sir James Wallace of explaining himself.

Your second application in the evening of the 20th of July, was a very equivocal business—You would wish, it seems, to have both those interviews considered as challenges.*

Admitting

* This is a very different idea from that which Sir James Wallace wished the public to entertain of him from his letter of the 28th of December in the Morning Herald.

Admitting they were so, Sir James Wallace, as a good officer, was not in honour bound to accept them, as he was in actual service—his duty to his sovereign superseded every other obligation, and his life, in which the public were interested, during the heat of the war, was not to be sacrificed to any private resentment.*

I take this to be universal military law, in which there was no danger of falling into disgrace with his corps, if this was the conduct of the inferior to his superior, to whom was entrusted the care of one of his Majesty's ships of war, which was then engaged in the service.

At Bath no challenge was sent to Sir James Wallace—no gentleman waited upon him to intimate your intentions of coming there, and what was Mr. Abbott's opinion upon the letter being shewn him, which came from you?—That Sir James ought not to answer it.

Upon your return to town you would have us understand the Earl of Cork waited upon Sir J. Wallace to know his determination, but that he could not see him, and, as you say in your libel you suppose he was closeted, preparing a complaint against you to the Admiralty.

All this is denied by my Lord Cork, who has said you made an apology to him for this false assertion.

Mr. Bourne. It is false, my lord, I never made Lord Cork an apology.

What

* In the course of the trial, an officer declared an opinion in favour of Mr. Bourne, and Lord Mansfield said it is offering an insult to the court, and that the court never took opinions; a little after the carpenter and schoolmaster bolted in their opinions, which was, that if Sir James Wallace had brought Mr. Bourne to a court martial, he would have been broke; yet Mr. Abbott's opinion is treated with deference by the bench, because it is in favour of Sir James Wallace's retreat.]

What followed after?—It was the catastrophe of the 6th of February, for which you are now to receive the judgment of this court—And now I am come to that ground upon which I mean to examine your conduct as a man of honor.

There are some established rules in this imaginary court of honor, though no certain code which can be depended upon, therefore the discussion of this subject will not at all interfere in the judgment of the court, which was obviously intended to remove from the minds of the public the prejudice endeavoured to be fixed by your counsel—let it be understood that what has been advanced upon this head is not intended as a vindication of Sir James Wallace's courage, which has never yet been doubted in public or private life. A man of age and experience, and of acknowledged courage ought not in rashness to yield to the presumptuous intemperance of a young man, to provoke him to the field to the hazard of a life so valuable to the public.

Your attack at Port Royal was made in a very abrupt manner, when, instead of communicating your intentions to him by a friend, or letter, you rushed out of a negroe hut to offer an insult to your superior.*

But what was your conduct at Bath to him, what was the message sent by the waiter of the White Hart? That was to draw your adversary to a private room, where you yourself were armed—No option given as to time, place, or weapon; all those punctilios were omitted, though
your

* See affidavit of Messrs. Wier, Peacock, &c. contradicting this.

your journey to Bath was premeditated.* All this rude behaviour is followed by two abusive notes, and a kind of intimation or invitation the next morning to Captain Webber, to come and see you cane Sir James Wallace—You in Milford street say you shook your cane over Sir James Wallace—I do not believe it,† but if I give you credit for the shaking the cane over his head, it ought to be in aggravation; but you say your conversation with Mr. Abbott, and Sir James Wallace's appeal to the public, excited you to fresh acts of violence.

I reprobate and greatly condemn Sir James Wallace's publication in the Morning Herald of the 20th of December, it was highly improper.

He was provoked to it by a paragraph in the paper, which he had reason to think was your's, as you had in a letter to him threatened to expose him in the public prints, but you have now upon your oath denied that.

This brings me to the last scene, which ended in the same rough and ungentleman-like manner in which it began.

After this affair ended from the 23d December to the 6th of February, as you had time for consideration how to act with propriety, if you thought shaking your cane over Sir James Wallace's head at Bath not sufficient for a man whose

* I must here beg to refer the readers to my Affidavit

† Notwithstanding it appears by the affidavits that I actually did shake my stick over Sir James Wallace in Milford-street; yet the learned judge is pleased to declare he will not believe it; nor does his lordship seem to have a better opinion of the veracity of Mr. Lawe, one of Sir James Wallace's council, who pleads my having done so, as a justification of his silents cocking his pistol and presenting it to my breast.

whose conduct was to be examined by the strict rules of honor, you might have flung your hat in his face, or have given him a touch with your stick, instead of which you in an ungentleman-like manner struck him in the cruel way I before described, and after this have been rash enough at the end of the affidavit, to swear you was not induced to strike Sir James Wallace, either thro' malice or ill will, only in defence of your reputation, and you then conclude in these wrong words, saying it was not your intention to do him the least bodily mischief.

Therefore, the court, in consideration of your whole conduct, and as an example to deter others from being guilty of the same acts of violence, malice, and vindictiveness, and to discharge, as far as in our power, those false notions of honor which have led you to the commission of enormities, do pronounce upon you this

S E N T E N C E.

T H A T you, **CHARLES BOURNE**, be imprisoned in the custody of the Marshal of this court for two years, and that you give security for your good behaviour for the space of seven years, yourself in the sum of 1000*l*. and two sureties in 500*l*. each; and that you continue in the custody of the Marshal until you have given that security.

As to the publication of the libel upon the 23d of December, though it contains the grossest scandal—such as calling Sir James Wallace scoundrel, coward, liar, and other opprobrious names, yet, as it is only an answer to a prior publication

publication of Sir James Wallace, in his injudicious appeal to the public, where he speaks of your vain boastings and false assertions.—

The mild judgment of this court is, you pay a fine of fifty pounds to our sovereign lord the king, and that you be farther imprisoned till your fine is paid.

Mr. BOURNE, to the Counsel of Sir James Wallace,

Is this the boasted, the discriminating law you have desired me to reverence? If so, I thank heaven I am of an uncomplying spirit.

To the Court:

My lords, while I bow to the judgment of the court, I must declare that the conscious rectitude of conduct I feel, and which has been so honorably attested by my brother officers, men of every rank, and of the most liberal discernment, will, I trust, enable me to bear the severity of your decree.

Copy of the anonymous Paragraph which appeared in the Morning Herald previous to the letter published by Sir James Wallace. See Mr. Barr's affidavit in Appendix.

A certain naval character, who has made more than one hazardous EXPERIMENT during the war, is said to be at this time so awkwardly situated in consequence of a personal difference with a brother officer, that he ceases to be the NONSUCH of valor he was once taken to be. It has indeed been observed, that he gave up the WARRIOR some time since, but his greatest enemies will hardly think so meanly of him, as to conceive he means to fly to the other EXTREME, and be terrified at a country from whose Bourne no traveller returns.

R E S O -

RESOLUTIONS of the MARINE CORPS.

The affidavit of *James Hamilton* Esq. captain and late adjutant of the Portsmouth division of his Majesty's marine forces, states, that at a meeting of the officers of the said division, "to enquire into the conduct of Lieutenant *Charles Bourne*, respecting a dispute which he has for some time been engaged in with Sir *James Wallace*, and which had been much the subject of public conversation," in consequence of what was at that meeting related by Captains *Webber* and *Hamilton*, as well as what had appeared in the public prints, under the signatures of Sir *James Wallace* and Lieutenant *Bourne*, together with a public transaction, for which Lieutenant *Bourne* is now under prosecution by Sir *James Wallace*, the officers thought proper to agree to the following resolutions, viz.

"That it is the opinion of the officers of the Portsmouth division of marines, that Lieutenant *Bourne*, conceiving himself to have been grossly ill-treated by Sir *James Wallace*, on board the *Warrior*, was highly justified in attempting to procure from Sir *James Wallace* an explanation of his conduct towards him.—It is likewise the opinion of the said officers, that Lieutenant *Bourne*, in attempting to obtain a meeting with Sir *James Wallace*, for the purpose of an explanation, conducted himself with spirit and with propriety.—The said officers are further of opinion, that it would be highly improper for a gentleman, honoured with a commission in his Majesty's service, to accept of a challenge from an officer, who having been publicly caned and stigmatized with epithets, the most severe and disgraceful, thought proper to seek for his redress

dress in a court of law, though the person who had so treated him, was an officer of established good character, and as such, respected by his corps; it is therefore the opinion of the officers of the Portsmouth division of marines, that Lieutenant Bourne be acquainted, that they think his accepting a challenge from Sir James Wallace, should Sir James Wallace think proper to send him one, will be a degradation of his rank and character as an officer and a gentleman.

*Signed by the officers at the mess-room,
May 5, 1783.*

George James Proffer, lieutenant and adjutant of the Plymouth division of his Majesty's marine forces, maketh oath, that having received a letter from Captain Hamilton, adjutant of the marines at Portsmouth, inclosing the resolutions of the officers of that division, assembled to enquire into the conduct of Lieutenant Charles Bourne, in respect to a dispute between him and Sir James Wallace knight, and desiring that the same might be laid before the officers of the Plymouth division of marines for their opinion; he this deponent did accordingly lay the said resolutions before a general meeting of the officers assembled for that purpose; when the officers present, being perfectly satisfied with Mr. Bourne's conduct, on that occasion, as well as every other, thought proper to agree to the same resolutions, of which the following is a copy, viz.

[The resolutions are the same as those of Portsmouth.]

The affidavit of Captain *Berkeley*, adjutant of the Chatham division of his Majesty's marine forces, saith, that he laid a copy of the resolutions of the officers of the Portsmouth division, as

transmitted to him by Captain Hamilton, before the officers of the Chatham division, assembled at that place, for the purpose of enquiring into the conduct of Lieut. Ch. Bourne towards Sir James Wallace, and considering the propriety of the said resolutions of the officers of the Portsmouth division, when this deponent was ordered to declare to Captain Hamilton and Lieutenant Bourne, the entire approbation of the said officers to the two first articles of the said resolutions, but that they were of opinion, the assenting to the third article, would be wounding the feelings of Lieutenant Bourne, whose whole conduct had been such, as not to leave them the smallest room to doubt of his continuing to act with propriety.

APPENDIX

Lord Mansfield has thought proper to adopt the opinion of one of the counsel of Sir James Wallace, to censure a body of gentlemen, for a conduct of which he could not possibly be a judge, for as the resolutions were not read in court, consequently the court was incompetent to judge of their merits. Mr. Bourne laments the circumstance of that incompetency, for, had the resolutions been produced, he is satisfied his lordship's discernment and liberality would have prevented any indelicate expressions. It has been said by the counsel and court, that only one side of the question had been enquired into, because Sir James Wallace was not present at the meeting; neither was Mr. Bourne, nor had he any other advocates than those who were made so by the goodness of his cause; and the knowledge of his conduct, while Major Warle, the friend, and for many years intimate companion of Sir James Wallace, was present, and his subsequent conduct fully evinced how far his attachment was capable of leading him. The first resolution did not admit of a dispute, because no person could doubt the right of a gentleman, who felt himself aggrieved, to demand an explanation from the person who had aggrieved him. The question next to be considered was, not whether Sir James or Mr. Bourne, had originally been in fault, that being a matter the meeting did not mean to enquire into, but whether Mr. Bourne, conceiving himself to have been ill-treated, had, in demanding an explanation, conducted himself with propriety; when the testimony of gentlemen of the strictest character, whose immediate knowledge of parties and facts, enabled them to speak to the particulars of the business, and who evidently could be no otherwise interested, than as they imagined it to be the cause of justice, induced the meeting to agree to the second resolution. And as to the last point that was to be determined on, there could not be any side or party to be examined. The public prints had announced the caning of Sir James Wallace. That disgusting circumstance stood uncontroverted to the world, nor was there a single person who would say, that caning did not bring ignominy on the man who tamely suffered under it. A military man has ever been deemed the guardian of his own honor, and until honor ceases to hold a place amongst the military, the officer who submits to the degradation of a blow, from another officer, must be looked on as beneath the level of a gentleman, and not only justify, but enforce the necessity of such resolution.

A P P E N D I X.

A F F I D A V I T. No. I.

CHARLES BOURNE, first lieutenant in the Portsmouth division of his Majesty's marine forces, the defendant above-mentioned, maketh oath, that his first personal knowledge of Sir James Wallace, was about the month of August, 1781, when this deponent was at Whitehall, under chirurgical care for the cure of a wound he received on service in America; that Sir James Wallace, together with a particular friend of this deponent, entered the apartments in which deponent then was, that the said Sir James Wallace's face was bloody, and his cloaths torn, and that he, and the friend of this deponent, bore evident marks of having had a violent encounter; that upon attempting to interfere to prevent further mischief, the said Sir James Wallace flew at deponent, and seizing him by the breast, demanded to know if he would fight, and take the quarrel upon himself, but this defendant then being in a very weak state of body, with his arm in a sling, and this deponent having as little inclination as ability for an affray, declined it. And this deponent further saith, that the next morning, Mr. Sleigh (whom this deponent understands to be brother-in-law to the said Sir James Wallace) waited on this deponent, and seemed much distressed about the consequences that might attend Sir James Wallace's meeting with a gentleman, with whom he had the quarrel aforesaid, and intreated this deponent to interfere, as he had before done, to prevent it. And this deponent saith, that being pleased with this further opportunity of interfering in like manner, to prevent any further difference between the parties, he, this deponent, accordingly applied to his friend, and urged every argument in his power to prevent

APPENDIX.

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such

such consequences, and with very great difficulty prevailed on him to rest contented with what he had done. And this deponent further saith, that a few months afterwards, he thought himself sufficiently recovered to embark again on service and join his division at Portsmouth, when his Majesty's ship, the Warrior, commanded by the said Sir James Wallace, demanded a detachment of marines, and this deponent was ordered on board her. And this deponent saith, that being anxious to get clear of a man, whose conduct had not impressed this deponent with any favourable sentiments towards him, he, this deponent, endeavoured to avail himself of the privilege frequently given to officers, of changing duty or ships with each other, but this deponent saith, that though there were several officers at quarters, who wished to go to sea, yet he could not prevail on any one officer to exchange with him. And this deponent saith, that during the voyage of the ship Warrior, from England to Jamaica, he experienced from the said Sir James Wallace several instances of insult, outrage, and unofficerlike behaviour, particularly on observing this deponent walking on the quarter-deck, he, the said Sir James Wallace, would frequently come out of his cabin, with his fists clinched in a most menacing and provoking manner, driving this deponent from side to side of the said ship, with an intention, as this deponent firmly believes, to irritate him to some act or expression, for which he might be brought to a court-martial, which deponent being aware of, suppressed his natural resentment, and treated the said Sir James Wallace with every respect that is due to a commanding officer. And this deponent further saith, that some time before the said ship, Warrior's, arrival at Jamaica, Mr. Stephenson, one of the lieutenants of the ship, came, seemingly intoxicated with liquor, from Sir James Wallace's cabin, into the ward-room, and behaved with great rudeness and impropriety to the company, but most particularly to this deponent, which deponent verily believes was at the instance of the said Sir James Wallace, the

the said Mr. Stephenson then blowing out the candles, ordered the servants, in an official manner, not to light them again. And this deponent further saith, that the gentlemen of the ward-room, finding themselves in the dark, and likely to remain so, unless redressed by superior power, sent their respectful compliments to Sir James Wallace, begged to inform him, that the candles were blown out by Mr. Stephenson, and not suffered to be re-lighted, and that if it was not Sir James's wish or desire they should be so, requesting he would order them to be lighted again. And this deponent further saith, that immediately after the said message was sent him, the said Sir James Wallace sent for this deponent into his cabin, where he was sitting with the captain of marines, master, and surgeon, and upon this deponent entering his cabin, Sir James Wallace advanced towards this deponent, and with his fist clinched, demanded of this deponent, what message was that was sent him; and this deponent saith, that he bowed, and repeated the message that was sent by the gentlemen of the ward-room, viz. their respectful compliments, &c. And this deponent saith, that Sir James Wallace desired this deponent to get away, that he would say nothing to him at that time, but that he would take an opportunity, that this deponent should hear from him; this deponent then replied, that he should be happy in the honor at any time, to hear what he had to say, and retired. And this deponent saith, that the next morning Lieutenant Stephenson, repenting of his misconduct, requested that the gentlemen of the ward-room would attend, while he declared his concern for the whole of his behaviour, and particularly that part of it which related to this deponent, declaring that he was drunk, that he was sorry for what had happened, and intreated this deponent's pardon and forgiveness. And this deponent further saith, that on the 24th day of April, 1782, the said Sir James Wallace, seeing this deponent on the quarter-deck, came running out of his cabin in a violent manner, with his fists clinched to this deponent's face, muttering the word scoundrel, but this deponent really thinking

ing the said Sir James Wallace, at that instant, in a state of madness, turned away his head and went to the other side of the deck, and walked with Lieutenant Monk, the officer of the watch, the said Sir James Wallace then walked backwards and forwards in the most violent rage, and then went into his cabin, and shortly returning, called loudly to Lieutenant Spry to attend to his public orders, which were, *That they who ever treated him with disrespect, should never walk on the same side the quarter-deck with him, and therefore, Mr. Bourne, addressing himself to this deponent, you must ever walk on the opposite side,* or words to that effect, upon which this deponent said, he was confident he did not come within that description, and that his conduct to Sir James Wallace had ever been the reverse. Whereupon the said Sir James Wallace, in an insulting manner, asked this deponent if he dared to dispute his orders, to which this deponent replied "certainly not," that he was too old a soldier to dispute an order, but that if he persevered in it, he, this deponent, must consider himself a prisoner, for that under such unprecedented instances of restriction, public insult, and disgrace, he could not do his duty as an officer, and requested the said Sir James Wallace, that if any part of his conduct was exceptionable, he would confine him in the regular manner, that he might have an opportunity of clearing himself instead; of which the said Sir James Wallace peremptorily charged this deponent to attend to his order. And this deponent further saith, that for two or three weeks after, during the time they were at sea, and even when they arrived at Port Royal, the said Sir James Wallace did not revoke the said order; that deponent, upon the ship's arrival there, wrote a letter to the naval commander in chief, the tenor of which was sunk in Le Hector, but as near as this deponent can recollect it was to the following purport, viz. complaining of the aforesaid order, and soliciting the admiral's protection, and requesting him to grant an enquiry into deponent's conduct, how far he had treated the said Sir James Wallace with any disrespect, and into his authority for treating deponent in such an unofficerlike and ungentlemanlike

manlike a manner, and also requesting that the admiral would order a court-martial on Sir James Wallace for public insult and oppression, and a breach of the fifth article of the printed instructions, in attempting to punish deponent. And deponent further saith, that instead of complying with this deponent's request, the commander in chief, about nine or ten days afterwards, sent an order to discharge this deponent from the Warrior, into Le Hector, a French prize. And this deponent further saith, that some short time afterwards, this deponent accidentally meeting the said Sir James Wallace on shore, at Port Royal aforesaid, in company with Major Varlow, of the marines, he, this deponent, gave Sir James Wallace an opportunity of explaining himself, which he declined, and walked quickly away from deponent to his boat. And this deponent further saith, about a month or six weeks afterwards, this deponent again met the said Sir James Wallace on shore, at Port Royal aforesaid, in company with a captain of the navy, and this deponent again offered himself to the said Sir James Wallace, who declined coming to an eclaireissement, but promised deponent that he, the said Sir James Wallace, would do his duty, and that deponent should hear from him. And this deponent further saith, that notwithstanding the said promise, he never heard from the said Sir James Wallace, though the said Sir James Wallace, and this deponent, remained on the said Island for some weeks afterwards; but instead of any apology, was informed by several officers, that the said Sir James Wallace continued to treat deponent's name and character with abuse and disrespect. And this deponent further saith, that on his arrival in Plymouth from Newfoundland, he thought it a duty indispensable to his character, as an officer and a gentleman, to come up to London, to obtain an explanation from the said Sir James Wallace, for such gross and injurious conduct, and having before been upon terms of intimacy and friendship with the Earl of Cork, he, this deponent, waited on his lordship, and acquainted him with the various circumstances of the ill-treatment he had met with from the said Sir James Wallace. And this deponent further saith, that the said Earl of
Cork,

Cork, with readiness and kindness, offered to accompany this deponent, as his friend, to Bath, where the said Sir James Wallace was said to be at that time; which this deponent declined, having heard that Captain Webber, a gentleman for whom this deponent had the highest respect and esteem, was then at Bath. And this deponent further saith, that upon his arrival at Bath aforesaid, he waited on the said captain Webber, and made him fully acquainted with the purport of his visit to that city; the great confidence which this deponent had in captain Webber's good sense and conduct, being deponent's strongest motive for his application to that gentleman for advice, this deponent having resolved to act in the whole of this business with the strictest propriety. And deponent further saith, that he in vain endeavoured to obtain an interview; he at length met the said Sir James Wallace in a street, at Bath aforesaid, and upon demanding such concessions as he conceived his character required, the said Sir James Wallace presented a pistol, cocked at deponent's breast, declaring he would shoot him. And deponent further saith, that he expressed his warmest resentment and surprise at such conduct in the open street, and urged a more private meeting, which the said Sir James Wallace absolutely refused. And deponent saith, that he was informed and believes, that the next morning the said Sir James Wallace left Bath. And deponent further saith, that in the evening of that day, a gentleman of the name of Abbot, accompanied by another gentleman, called upon deponent, and declared, that if he had sent a written challenge, Sir James Wallace would have met him; to which deponent answered, that from the opinion he entertained of Sir James, he would not venture to give him possession of a paper so offensive to the laws of the country; to which the said Mr. Abbot only replied, by observing, that Sir James Wallace would still come to an explanation, provided deponent would send a gentleman to him upon the business. And deponent saith, that upon hearing the latter declaration, he resolved upon his arrival in town, to call upon the Earl of Cork, acquaint him with the whole of the affair, and request that his lordship would call upon the said

said Sir James Wallace on the subject. Deponent further saith, that before the last declaration of Mr. Abbot aforesaid, he, this deponent, conceiving that he had asked sufficiently in the affair to vindicate his honour, determined to take no other step whatsoever, but in consequence of what Mr. Abbot said, he, this deponent, saith, that on his arrival in London, he waited upon the said Earl of Cork, for the aforesaid purpose, and that with the greatest readiness, and seeming kindness, he, the said Earl of Cork, agreed to call upon the said Sir James Wallace accordingly. And deponent further saith, that the said Earl of Cork afterwards informed this deponent, that he could not see the said Sir James Wallace, but had several times conversed with Mr. Sleigh, Sir James's relation and solicitor. And deponent saith, that he afterwards waited on the said Earl of Cork, in company with captains Desborough and Hamilton; the said Earl of Cork declared that he had again called at Sir James Wallace's, but could not obtain an interview with him, but that he had seen Mr. Sleigh, who informed him, the said Earl of Cork, that Sir James Wallace had written a letter of complaint against this deponent to the lords of the admiralty, and which, his lordship thought, argued no great sign of his intentions to meet this deponent, or he used words to that purport or effect. And this deponent further saith, that after this conversation with the Earl of Cork, the deponent saw in the Morning Herald, the following letter, signed by Sir James Wallace.

December 20th 1782.

For the MORNING HERALD.

Mr. Editor,

UPON my arrival in town yesterday, I was informed a publication had appeared in your paper casting very pointed, scandalous aspersions on my character, of which, from some late transactions, I suppose Lieutenant Bourne of the marines to be the author; the whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a newspaper publication. I shall

shall therefore only say, that he has never once come to the point, either at Jamaica, Bath, or London, and if he had, I can demonstrate that I was prepared for him at each place, and might have prevented all his vain boastings and false assertions.

Dec. 1782.

JA. WALLACE.

And this deponent most positively swears, that he *neither wrote nor published, nor caused to be written or published, the article which appeared in the Morning Herald, to which the said Sir James Wallace alludes in the aforesaid letter, neither did he then, nor does he, this deponent, yet know any thing whatever of the author or publisher of the same.* And this deponent further saith, that by the advice of all his friends whom he consulted upon the occasion, and according to the dictates of his own sense of honor and character, he thought it his indispensable duty to publish the letter which appeared in the said Morning Herald of the 22d of December, under this deponent's proper signature, for which deponent is to receive the judgment of this honourable court. And this deponent further most positively and solemnly saith, that he was not induced to publish the said letter in the Morning Herald aforesaid, by any malice towards the said Sir James Wallace, nor has this deponent, either in his prior or subsequent conduct, in this business, been actuated by any other motive than the vindication of his own honor and reputation, as a gentleman and an officer. And, lastly, this deponent saith, that having lost almost every thing he was possessed of by the loss of Le Hector, he, this deponent, in order to enable him to bear the expences of the two prosecutions which are commenced against him by Sir James Wallace, has been obliged to grant an annuity upon a pension this deponent receives from government, for wounds received in service, and that nothing but the defence of his reputation could induce him to part with.

AFFIDAVIT

AFFIDAVIT of Lieut. MONKE. No. II.

GEORGE PARIS MONKE, late fourth Lieutenant of his majesty's ship Warrior, commanded by Sir James Wallace, maketh oath and saith, that some time about the latter end of April, 1782, this deponent was walking on the quarter-deck of the said ship Warrior, with the above defendant, Lieut. Charles Bourne, when the said Sir James Wallace, seeing the said defendant upon the quarter-deck, came running out upon him from his cabin in a very violent manner, with his fists clenched to his face, his brows knit, and his eyes, as it were, darting fire, in short, betraying every symptom of insanity. And that he, the said Sir James Wallace, then gave out in public orders to Mr. Spry, the first Lieutenant, That no person who had treated him with disrespect should walk on the same side of the quarter-deck with him; at the same time turning to the said Charles Bourne, in a very uncivil manner addressed himself to him nearly in the following words, "Therefore Mr. Bourne you must ever walk on the opposite side." And this defendant further saith, that he hath several times seen the said Sir James Wallace treat the said Charles Bourne (in this deponent's opinion and judgment) in a most un-officer-like, infamous, and insulting manner, with a view, as this deponent ever conceived, to irritate the said Charles Bourne to commit some act of violence against him, in order to take the advantage of trying him by a court-martial, to satisfy his implacable and unjust resentment; and this deponent further saith, that he is also of opinion, that no officer under the circumstance of such public disgrace and insult could with any degree of propriety or honor do his duty. And this deponent further saith, that he hath strictly observed the conduct of the said Charles Bourne, while serving on board the Warrior, and always found it to be that of a gentleman, a sober, diligent, and gallant officer, and a man of honor not in the least inclined to be quarrelsome or disrespectful either to Sir James Wallace or any of the officers; on the contrary, this deponent saith, that the conduct of

Sir James Wallace towards the said Charles Bourne was in general in the highest degree tyrannical and oppressive, and such as this deponent verily believes none but a man out of his senses, or intoxicated with liquor, could have been guilty of. And this deponent further saith, that soon after the Warrior arrived at Port Royal, Jamaica, this deponent as commanding officer (in the absence of the said Sir James Wallace, and the first, second, and third Lieutenants, received a letter addressed to Sir James Wallace on his majesty's service, from Admiral Sir Geo. B. Rodney, inclosing one from the said Lieutenant Bourne, representing the order of the said Sir James Wallace above alluded to, that he should not walk on the same side of the quarter-deck with him, and requesting under such circumstances of public insult and disgrace, the said Sir George Rodney would please to grant an inquiry into his, the said Charles Bourne's conduct, how far he had treated Sir James Wallace with disrespect, and also requesting that he would order a court-martial on Sir James Wallace for public insult and oppression, and a breach of the twelfth and thirteenth articles of the printed instructions, in order to free him, the said Charles Bourne, from his disgraceful situation, which letter and inclosure this deponent delivered to the said Sir James Wallace on his coming on board,

AFFIDAVIT of AUGUSTUS MARKETT, late third Lieut. of the Warrior. No. III.

AUGUSTUS MARKETT, late third Lieutenant of his majesty's ship Warrior, maketh oath, that his first knowledge of the said Charles Bourne was in November, 1781, when he was embarked as Lieutenant of marines on board his majesty's said ship Warrior. And this deponent saith, that he was instantly struck with the easy, polite, and gentlemanlike address of the said Charles Bourne, which pointed him out to this deponent as a very eligible and desirable acquaintance, and led this deponent to watch most attentively over those parts of his conduct that might fall under his observation, that if, upon the strictest scrutiny, this deponent should find him

so perfectly the gentleman his appearance so expressively bespoke him, this deponent might, by taking him as a model, and paying a minute attention to that happy manner of behaviour which so eminently distinguished him, in time gain his esteem, and then his friendship. And this deponent further saith, that in this he conceived himself amply rewarded, having constantly found in the said Charles Bourne all that could be desired in the gentleman and officer, his good breeding and amiableness of disposition making him every one's favorite, and rendering it almost impossible for any man in his senses to quarrel with him. And this deponent further saith, that as an officer the said Charles Bourne conducted himself with alertness, assiduity, and the strictest attention to discipline, and that he was an example of sobriety and good conduct to all under his care. And this deponent further saith, that he saw the said Charles Bourne in action with the French fleet on the memorable 9th and 12th of April, when he was quartered in a part of the ship much exposed to the fire of the enemy. And this deponent saith, that the said Charles Bourne, during the confusion of the said combats, acquitted himself with that heroic intrepidity, that cool, resolute, and undaunted execution of duty, which so effectually increases the ardour of the men, and renders the officer the admiration of his profession. And this deponent saith, that he was present in Sir James Wallace's cabin on board the Warrior some time in the month of February, 1783, when the said Sir James Wallace put the following question to him in the presence of several officers of the ship and his servants, viz. "Why, if you thought yourself aggrieved or affronted, did not you call me out?" or words to that effect. And this deponent saith, that the said Charles Bourne was careful of saying of any thing that a court-martial could take cognizance of, imagining the said officers and people were placed there with a view to catch at any word that might be given in evidence against him. And this deponent further saith, that he verily believes the said Charles Bourne to be most foreign to a quarrelsome disposition, and as an instance of his pacific and good temper, this deponent says, he was present when one of the Warrior's officers, without the least provocation

on the part of the said Charles Bourne, treated the said Charles Bourne in the most abusive and insulting manner, and that the said Charles Bourne, instead of resenting the same in a manner that most people would have done, waited the return of the said officer's reason, and with the greatest good nature accepted an apology from him in the morning.

AFFIDAVIT of Captain GREEN, of the
Marines. No. IV.

CHARLES GREEN, Esquire, captain in his majesty's marine forces, maketh oath and saith, that some time in or about the month of July in the year 1782, he, this deponent, being then at Port-Royal in the island of Jamaica, and in company with Lieutenant Charles Bourne, defendant in this cause, the said Charles Bourne communicated to this deponent several particulars of a series of ill-treatment, which he declared he had received from Sir James Wallace, commander of his majesty's ship the Warrior, during the voyage from Portsmouth to the island of Jamaica aforesaid; that the said Charles Bourne at the same time expressed a very high sense of the said injurious treatment, and declared with becoming warmth and energy that he was resolved to obtain ample atonement from the said Sir James Wallace for his said conduct; that the said Charles Bourne further declared, that the said Sir James Wallace having before declined that kind of explanation which, as a gentleman and an officer, he, the said Charles Bourne, had a right to demand and expect, he was determined to avail himself of the first opportunity of doing that public justice to his character, which the public notoriety of the case demanded, by obliging the said Sir James Wallace to come to the point at once (or words to that effect) but that if the said Sir James Wallace could not be prevailed upon to do justice in that way, he, the said Charles Bourne, was resolved to cane him, or chastise him in some manner equally ignominious, as a paltroun and coward deserved. Deponent further saith, that in a few minutes after this conversation,

conversation, the said Sir James Wallace, together with Captain Fisher, of Le Caton, accidentally appeared on the other side of the way, near the hospital, and being observed, the said Charles Bourne immediately broke from deponent, saying, that the business should then be settled, or words to that effect, and crossing the way, stopped the said Sir James Wallace. Deponent further saith, that an altercation between the said parties (the whole of which he could not distinctly hear) then took place; that the said Charles Bourne laying his hand to his sword, declared, in the hearing of deponent, that he expected Sir James would then settle the matter like a gentleman, or words to the same purport, but that Sir James Wallace, who was also armed with a small sword, seemed unwilling to accept the challenge, notwithstanding the spirited and indignant manner in which the said Charles Bourne addressed and treated him. Deponent further saith, that throughout the whole of the said transaction, he, the said Charles Bourne, in the opinion of deponent, conducted himself entirely as became a gentleman and an officer, whose honor had been injured, and whose feelings had been exquisitely wounded by illiberal and disgraceful treatment.

AFFIDAVIT of Captain WEBBER, of
the Marines. No. V.

JOHN WEBBER, Esq. Captain in his majesty's marine forces, maketh oath, that in or about the month of December, 1782, he, this deponent, being on the recruiting service at Bath, was called on by Lieutenant Charles Bourne, defendant in this cause, who informed deponent that he had come to Bath in order to see Sir James Wallace, from whom he said he had received the grossest insults while under his command on board the Warrior, and declaring his intention of obliging the said Sir James Wallace to come to that explanation, which as a gentleman and an officer, his feelings could not dispense with, and the said Lieutenant Bourne seeming to wish to act with the strictest propriety, solicited this deponent's advice, and also requested of this deponent to carry

carry a message to the said Sir James Wallace, demanding a meeting for that purpose. And this deponent further saith, that he informed the said Charles Bourne, that if he would return to his inn, and send to Sir James Wallace from thence, he, this deponent, would accompany him as a friend, in case the said Sir James Wallace should call or send to him; or to that effect. Deponent further saith, that the said Charles Bourne sometime after returned to him, and acquainted him that he had sent several messages, desiring to see the said Sir James Wallace, without effect; that the said Charles Bourne then in the presence of this deponent, wrote to the said Sir James Wallace, to the following effect, that if he, the said Sir James Wallace, persevered in refusing to see him, it would confirm in his mind the opinion which he had long entertained, that the said Sir James Wallace was destitute of every principle of honor, and every idea of a gentleman; but the said Sir James Wallace still declining to see Mr. Bourne, that the said Charles Bourne then requested the further advice of this deponent how to conduct himself further, that never having known a gentleman under such circumstances, he, this deponent, did not know how to advise in a case of so delicate and serious a nature, but recollecting that Lieutenant Colonel Heathcot was then at Bath, he determined to acquaint him with the circumstances thereof, and to request his advice, which deponent did accordingly, but that Lieutenant Colonel Heathcot declared he was as much at a loss as this deponent could possibly be. And this deponent further saith, that finding in the conduct of the said Charles Bourne, during the course of their several meetings and conversations upon the occasion, such a disposition as he, this deponent, conceived to be spirited and proper, as an officer and a gentleman, the said Lieutenant Colonel Heathcot and this deponent determined to leave the subsequent conduct of the said Charles Bourne entirely to the regulation of his own judgment. And this deponent further saith, that upon this the said Charles Bourne immediately said, he thought it incumbent on him to cane the said Sir James Wallace, and accordingly went to the several public places, where the said Sir James Wallace was

was said to frequent, for that purpose, but that the said Sir James Wallace was not to be met with on that day. On the morning following, the said Charles Bourne in company with this deponent, waited at the pump-room from eight till ten o'clock without effect; that between twelve and one o'clock this deponent and the said Charles Bourne returned to the pump-room a second time, and was informed that the said Sir James Wallace had just been there and paid for his water, and was setting off for London, which determined the said Charles Bourne to go to the said Sir James Wallace's house, which, on account of ladies which were said to be there with him, the said Charles Bourne had before that time refrained from doing; that immediately after being in company with Mr. Davis, Agent Victualler of Gibraltar, he saw the said Sir James Wallace walking on the opposite side of the way, and at the same time the said Charles Bourne approaching him, deponent says, that he was not near enough to hear any part of the conversation which passed thereon between the said parties, but that he saw the said Sir James Wallace instantly draw a pistol from his pocket, which he presented to the breast of the said Charles Bourne, whose then gestures seemed to menace and threaten the said Sir James Wallace with the consequence of his resentment, at the same time shaking his cane or stick at the said Sir James Wallace; that the said Sir James Wallace and the said Charles Bourne shortly after parted. And this deponent further saith, that upon this, as well as upon every other occasion respecting the said dispute, the conduct of the said Charles Bourne was, in the opinion of this deponent, such as could not be dispensed with by any gentleman, particularly an officer, under the same kind of circumstances. And deponent further saith, that in his opinion of the conduct of the said Charles Bourne, he, the said deponent, had the concurrence of the above-mentioned Colonel Heathcot, a gentleman of the strictest honor and best judgment.

AFFIDAVIT

**AFFIDAVIT of Mr. BARR, Printer of the
Paper called the MORNING HERALD. No. VI.**

J. S. BARR, printer of the Morning Herald, maketh oath, that on the 20th of December last, the following article was brought him by Mr. Sleigh (who this deponent is informed is Sir James Wallace's Solicitor and relation) signed by Sir James Wallace, with directions to be inserted in the Morning Herald of the next day, and which, upon the authority aforesaid, was accordingly inserted, viz.

" Mr. Editor,

"UPON my arrival in town yesterday, I was informed a publication had appeared in your paper of Monday last, casting very pointed, scandalous aspersions on my character, of which, from some late transactions, I suppose Lieut. Bourne of the marines to be the author; the whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a newspaper publication, I shall therefore only say, that he has never once come to the point, either at Jamaica, Bath, or London, and if he had, I can demonstrate that I was prepared for him at each place, and might have prevented all his vain boastings and false assertions."

Dec. 20th, 1782.

JA. WALLACE.

And this deponent further saith, that for the insertion of the abovementioned article, the said Mr. Sleigh paid this deponent half a guinea.

**AFFIDAVITS of LAWRENCE DESBOROUGH,
and JAMES HAMILTON, Esqrs. captains of the
Portsmouth division of marines. No. VII.**

Make oath and say, and first this deponent, Lawrence Desborough, for himself saith, that at the request of the above defendant, Charles Bourne, he accompanied him, some time about the middle of December last, to the lodgings of the Earl of Cork, in Grosvenor-street, whom
the

the said Charles Bourne acquainted this deponent, had most generously interested himself in his affairs with Sir James Wallace, and had undertaken to carry a message to the said Sir James Wallace, demanding an immediate meeting, for the purpose of giving the said Sir James Wallace an opportunity of making a proper apology to the said Charles Bourne, or of giving him satisfaction in the usual manner amongst military men.

Saith, that at Lord Cork's house they were acquainted by the servant, that his lordship, after waiting some time for Mr. Bourne, was gone out, but had left a note for Mr. Bourne, which note was to acquaint him, that his lordship had not been able to effect an interview with Sir James Wallace; that he should be at home at four o'clock that afternoon, and would be glad to see him.

Both say, that the next morning they, these deponents, accompanied the said Charles Bourne to the lodgings of the said Earl of Cork, and after the usual ceremony of introducing these deponents to his lordship, the conversation immediately turned on the result of the said message, when the said Earl of Cork acquainted the said Charles Bourne, that he had again called at Sir James Wallace's house, but that he could not see him, as he was said to be out of town, or words to that effect, but his lordship observed that he had seen Mr. Sleigh, who, these deponents are informed, is Sir James Wallace's brother-in-law and solicitor, who had acquainted the said Earl of Cork, that Sir James Wallace had written a complaint against Mr. Bourne, to the lords of the admiralty; that he, the said Earl of Cork, then acquainted Mr. Sleigh with the purport of his errand, that he came as Mr. Bourne's friend, and should expect Sir James's answer. Deponents say, that the said Earl of Cork then expressed his surprize that he had not heard from Sir James Wallace, which made his lordship conclude he was out of town, or waited the issue of his complaint to the lords of the admiralty, and which, he thought, argued no great sign of his intention to answer Mr. Bourne's challenge, but that if he did, he should be very happy to convince Mr. Bourne how much he was his friend. Deponents say, that during the whole course

of the conversation, the said Earl of Cork expressed himself towards Mr. Bourne, seemingly with most perfect esteem and friendship, and at parting, profest the highest approbation of Mr. Bourne's conduct, and making the strongest offers of his countenance and support. Deponents say, that they have been long upon habits of intimacy and friendship with the said Charles Bourne, and that so far from finding in him a tendency to quarrels and disputes, he has ever conducted himself in such a manner as to make his line of conduct worthy the imitation of those who value themselves most upon the nicety of their feelings, and propriety of their conduct.

AFFIDAVIT of Major General COLLINS.
No. VIII.

Major General Arthur Collins maketh oath, that Lieutenant Charles Bourne of the marines, was under the command of the Plymouth division for a considerable time, where they lived together at the marine mess, that he, this deponent, always noticed the said Lieutenant Bourne to have conducted himself as an officer and a gentleman, in every sense of the word, and never gave the least sign of a quarrelsome disposition, on the contrary, he was constantly remarked for ease, good humour, and the gentility of his behaviour.

AFFIDAVIT of JAMES HAWKES, Esq.
Commander of the Iris. No. IX.

Captain James Hawkes, late commander of his Majesty's ship Iris, maketh oath, that he knows Lieutenant Charles Bourne, the defendant above-named, and has known him for some years; that he, the said defendant, sailed under this deponent's command, in the Iris, as first lieutenant of marines, from the 20th day of July, 1779, to the 10th day of June, 1780, during which time, said defendant behaved like a gentleman, in every respect, as well as an obedient good officer. And this deponent
also

also saith, that he never had the least reason to be at any time dissatisfied with his conduct or behaviour; that during the time that this defendant served with this deponent, the said defendant was dangerously wounded in an action, with a French frigate of superior force, when he behaved with great gallantry and alacrity, and being very ill with the said wound, was obliged to be landed at New York, and when this deponent came home, in the Renown man of war, the said defendant returned with him as a passenger, being then very ill of his said wound. And this deponent further saith, that during the whole of this deponent's knowledge or acquaintance with the said defendant, he never knew him quarrelsome or troublesome.

AFFIDAVIT of JOHN BOURCHIER,
Commander of Le Hector. No X.

JOHN BOURCHIER, Esq. commander of his Majesty's ship Le Hector, maketh oath, that the above defendant, Charles Bourne, was serving on board his Majesty's said ship, from the month of May to the month of October 1782, when she was unfortunately lost. And this deponent saith, that during all the said time, the said Charles Bourne behaved in every respect, becoming the character of a gentleman and an officer, and very much to the satisfaction of this deponent, not in the least inclined to be troublesome or quarrelsome. And in action, and during all that unfortunate voyage, behaved with the greatest attention and good conduct. And this deponent further saith, that the high opinion which he entertains of the said Charles Bourne, would make him happy upon all occasions to receive him as an officer, on board any ship this deponent might have the honour to command in his Majesty's navy.

AFFIDAVIT of Lieutenant THOMAS MIDDLETON, of Le Hector. No. XI.

THOMAS MIDDLETON, late Lieutenant of his Majesty's ship Le Hector, maketh oath and saith, that

he has been intimately acquainted upwards of a year, with Charles Bourne, the defendant in this cause, six months of which they lived together, and from the observations this deponent had made on the disposition and character of the said Charles Bourne, he verily believes him incapable of harbouring a dishonourable or an ill-natured thought as any man. And this deponent further saith, that on their passage from Jamaica, in Le Hector aforesaid, in the month of October last, they had a long and desperate battle with two French men of war, during which, as well as through a succeeding scene of sickness, thirst, and hunger, in a sinking ship, a considerable distance from any land, and precluded from every prospect of deliverance, the cool, and unabated intrepidity of the said Charles Bourne, inspired courage and hope to every person round him. And this deponent further saith, that so far from the said C. Bourne being of a quarrelsome disposition, that he hath seen many instances of his accommodating the disputes of others, and deponent firmly believes, that there is not existing a more peaceable, worthy, and gallant officer.

AFFIDAVIT of BOWLES MITCHELL,
first Lieutenant of the Iris. No. XII.

BOWLES MITCHELL, late first lieutenant of his Majesty's ship Iris, maketh oath and saith, that he hath been, off and on, intimately acquainted with Lieutenant Charles Bourne, defendant in the above cause, these four years, above a year of which, he messed and did duty with the said Charles Bourne, having unremitting opportunities of observing the conduct and behaviour both public and private, of this deponent, he ever found the said Charles Bourne an enviable character, both for his benevolence, and pleasant temper, and possessed of every good quality to endear him to mankind and society; nor would it be but justice, to acknowledge the satisfaction he always had, as executive officer in the ship, in giving the defendant any directions for executing his duty, as they were always done with the greatest care and dispatch, and with that zeal he always shewed to service. Having
been

been in action with the defendant, where he exerted himself and received a desperate wound, his usual coolness and good temper still remained; and deponent had, by serving as lieutenant in the ship the defendant came home in from America, an opportunity of observing his intrepidity and coolness, under the most excruciating pain, occasioned by a cannister shot lodging behind his shoulder blade, which he bore with that manly fortitude and good temper, he was always known to possess.

AFFIDAVIT of Lieutenant **INMAN**, of
Le Hector. No. XIII.

HENRY INMAN, late lieutenant of his Majesty's ship **Le Hector**, maketh oath and saith, that he has been acquainted with **Charles Bourne**, the above defendant, for twelve months, six months of which they lived together; that they sailed from the island of Jamaica, about the latter end of July, 1782, on board **Le Hector**, aforesaid, commanded by **John Bouchier, Esq.** and that deponent further saith, that under all the known calamities that attended that unfortunate voyage, in the most trying and alarming situations, surrounded by death and carnage, in action, and suffering all the horrors of hunger, thirst, sickness, and apparent dissolution, the manly spirit and resolution of the said **Charles Bourne** was such, as diffused comfort, hope, courage, and perseverance, to me, and all who had an opportunity of observing him. And this deponent further saith, that he has never known the said **Charles Bourne** in the least to breed dissensions or quarrels, but on the contrary, that he was ever foremost to make them up, when they happened with other officers; and in the opinion of this deponent, the said **Charles Bourne** is incapable of any degree of malice, and is a quiet, sober, amiable, and brave officer.

THE KING
AGAINST
LIEUT. CHARLES BOURNE,
FOR AN ASSAULT.

DEFENDANT'S AFFIDAVIT.
No. I.

CHARLES BOURNE, the defendant, refers to his other affidavit for a libel in this honourable court, for his original cause of quarrel with Sir James Wallace, the prosecutor, and maketh oath and faith, that in the month of January last, after his return from Bath, and early in February last, he was on the recruiting service in Worcester, and was ordered from thence to Portsmouth, by a letter from Philip Stephens, Esq. Secretary to the Board of Admiralty, in order to give evidence at a court-martial that was ordered by that board to enquire into the cause of the loss of his Majesty's late ship Le Hector, and that in consequence of the said order he arrived in London on his way to Portsmouth, about ten o'clock in the evening of the fifth of February last, not thinking in the least of the prosecutor, Sir James Wallace; that on the morning of the sixth of February he, this deponent, met several of his friends and acquaintances, who told him that Sir James Wallace had taken frequent opportunities of meeting them, and traducing this deponent's character in the most vile and prejudicial manner, declaring that this deponent was a coward and a scoundrel, and that he, Sir James Wallace, was always ready to fight this deponent, but that deponent dared not meet him. And this deponent further saith, that he was the more inclined

clined to believe them from having before seen in the Morning Herald, signed Sir James Wallace, a letter nearly to that effect; that before he went to Worcester aforesaid the said Sir James Wallace had given out to the public his intention of commencing a prosecution against this deponent, for a letter he published in the Morning Herald, and this deponent, in consequence of the said declared intention, appointed Mr. George Coombe his solicitor, and left with him directions to watch the said Sir James Wallace's motions in the courts of law, that this deponent might be prepared to answer any charge the said Sir James Wallace might think proper to bring against deponent. And deponent saith, that the morning after his return from Worcester, he met the said Mr. Coombe near the Admiralty, who informed deponent, that though the term was drawing to a conclusion, the said Sir James Wallace had taken no step whatever against deponent, nor was it his, Mr. Coombe's opinion, that Sir James Wallace would do so, but believed he only meant to throw this deponent at a distance by said declaration, in which opinion deponent entirely coincided. And deponent further saith, that while the said Mr. Coombe and this deponent were in this conversation, the said Sir James Wallace appeared walking towards them. And this deponent further saith, that he borrowed a small * *switch cane, with an ivory head* from said Mr. Coombe, and on meeting the said Sir James Wallace, civilly addressed him, telling him that that meeting which was accidental, obliged deponent to desire to know in what manner he the said Sir James Wallace meant to justify his conduct towards deponent; to which Sir James answered, "In no manner whatsoever." And deponent saith, that a warmth of expression took place between the said Sir James Wallace and this deponent, which, in deponent's opinion, was such as left him no alternative, than striking the said Sir James Wallace, which deponent would not have done, could he from his sense of honor have avoided it, and most solemnly declares it was with the small end of the said cane; nor

* See the indictment, and Sir James Wallace's evidence, on page 15 of the trial.

would

Would this deponent have repeated the blow given to the said Sir James Wallace, had he not immediately struck at deponent with a large sized stick which he had in his hand. And deponent further most positively saith, that he was not induced to strike the said Sir James Wallace by either malice or ill-will, but only in defence of his reputation; and it was not his intention when he gave the stroke to do him the least bodily injury.

AFFIDAVIT of Mr. COOMBE.
No. II.

GEORGE COOMBE, of New Inn, in the county of Middlesex, gentleman, maketh oath, that he was walking with the above defendant very near the Admiralty Office, when the above named Sir James Wallace accidentally was walking towards them very near the Salopian Coffee House; and this deponent saith, that the said Charles Bourne immediately upon seeing the said Sir James Wallace, took a small cane with an ivory head from this deponent, and advanced towards the said Sir James Wallace, *that upon his coming up with the said Sir James Wallace, the said Charles Bourne addressed him in a polite manner, making a bow before he spoke, and entered into a conversation with him, the particulars of which the deponent could not hear, but from the motion of Sir James's lips is convinced he made him answers.* And this deponent saith, that after about a minute's conversation he saw the said Charles Bourne strike the said Sir James Wallace with the small end of the cane, when immediately the said Sir James Wallace defended himself with a large sized stick, and struck, or endeavoured to strike, the defendant with the thick end of it, and a cudgelling ensued between the parties for a few minutes, when they parted. And this deponent saith, he believes the said Charles Bourne would not have repeated the blows but to defend himself from being beat by the said Sir James Wallace, and that he did not consider the beating at all as a severe one, from the size of the cane, which he is of opinion could not do material injury to any one.

AFFIDAVIT

AFFIDAVIT of Mr. PEARCE. No. III.

WILLIAM PEARCE of Catherine-street, in the Strand, in the county of Middlesex, Esq. maketh oath, that he was crossing the street, nearly opposite the Admiralty, at the time the affray happened between the above prosecutor and defendant, that he saw the transaction, that Sir James Wallace had a large stick in his hand, and the defendant a small cane, and this deponent saith, that the caning of the said Sir James Wallace by the said defendant, was not, in this deponent's opinion, by any means a severe beating, so far as bodily pain could be concerned, nor does this deponent think it possible, from the size of the cane, which had an ivory head, and with which he has walked numerous times, to have done any person material injury with it, in the manner it was used by the defendant, as this deponent avers Lieut. Bourne struck Sir James Wallace with the small end of it only.

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A G A I N S T

LIEUT. CHARLES BOURNE,

FOR AN ASSAULT.

Sir JAMES WALLACE's AFFIDAVIT.

SIR JAMES WALLACE, of Hanworth, in the county of Middlesex, Knight, maketh oath and faith, That the defendant, Charles Bourne, embarked as the first Lieutenant of marines on board his majesty's ship the Warrior, under the command of this deponent, some time in November, 1781, whilst the said ship was at Portsmouth, fitting out for a voyage to the West Indies. And this deponent faith, that on or about the 11th day of January, 1782, the Warrior sailed from Portsmouth, and arrived at Madeira on or about the first or second of February, and that on her arrival there this deponent told Mr. Spry, the first lieutenant of the said ship, that all the officers belonging to the ship might go ashore every day whilst they lay there, but that this deponent expected them to sleep on board every night, observing to him at the same time, that as the combined fleets were then out, they should look very ridiculous if any of their cruizers should run in there in the night and take the ship without any of her officers being on board. And this deponent faith, that on Saturday, the second of February, according to the best of this deponent's recollection as to the time, this deponent introduced the said Charles Bourne, with some of his other officers, to Mr. Murray, the British consul there, where he dined with this deponent; and a little time before the company that dined

dined there broke up for the evening, the said Charles Bourne asked this deponent's permission to continue on shore for that night; and this deponent being unwilling to mortify him by a refusal of his request before so large a company, gave him leave to stay on shore for that night, notwithstanding the public order which this deponent had before given for the officers to sleep on board. And this deponent saith, that the said Charles Bourne continued on shore not only that night, but all the next day, and the night following, and great part of the third day, and got into broils and quarrels with the inhabitants, and behaved so indecently at the Theatre as to be turned out during the performance, as this deponent hath been informed and believes.* And this deponent saith, that the morning after the said Charles Bourne returned to the ship, he sent a note to this deponent, who was then on shore, in the name of himself and Mr. Markett, one of the lieutenants of the said ship, thanking this deponent for his polite introduction of them to the Governor of Madeira, acknowledging themselves indebted to this deponent for the civilities which they had received, and the polite treatment which they had experienced from the inhabitants whilst they were on shore (alluding, as this deponent believes, to their having been beaten and ill-treated by the inhabitants, and turned out of the Theatre. †) And this deponent saith, that the Warrior was then preparing to leave Madeira, and that the morning after he went on board this deponent sent for the said Charles Bourne and Mr. Markett into his cabin, and before Major Varlo and Mr. Spry, who he had desired to be present, and who were then in the cabin, asked them what they meant by the note which they had sent to this deponent; when the said Charles Bourne made answer, that they thought this deponent had used them very ill in not having introduced them to the Governor

* See the affidavits of Mr. Markett, Monke, Richards, Hodge, and Bourne, declaring the falsity of this assertion.

† The letter here alluded to was as follows:

"Mr. Markett and Mr. Bourne present their grateful compliments to Sir James Wallace, must attribute the respectful attention they met with on shore, as British officers, wholly to his polite, and undoubtedly proper introduction.

vernor of Madeira, upon which this deponent told them that if they thought so, he, this deponent, from that time could be no longer acquainted with them; but this deponent positively saith, that he did not then put the following question to the said Charles Bourne, viz. "Why, if you thought yourself aggrieved or affronted, did not you call me out," or used any other words to that or the like effect. * And this deponent saith, that as the said Charles Bourne never made any apology to this deponent for such improper conduct, nor seemed to be sensible that he had acted with any impropriety, he never afterwards dined with this deponent at his table. And this deponent saith, that on or about the 8th of March, the Warrior joined Lord Rodney's fleet, and continued with it until after the engagement of the 12th of April, when they sailed with the Squadron under the command of Lord Hood, for Jamaica, but separated from that Squadron in chase of some of the French ships on the twenty-first of April, and did not join it again until they arrived at Jamaica; and this deponent saith, that between ten and eleven o'clock in the night of the twenty-fourth of April, 1782, according to the best of this deponent's recollection as to the time, whilst this deponent was sitting in his cabin, with Major Varlo and Mr. Spry, a great noise was made in the ward-room, and a message sent up to this deponent to know if he had ordered the ward-room lights to be put out, upon which this deponent told the said Mr. Spry to go down, and to enquire into the reason of the disturbances, and such message, which the said Mr. Spry accordingly did, and on his return informed this deponent that Mr. Bourne had been making much noise, and that Mr. Stephenson, the then acting lieutenant, who was then in bed, was to turn out to keep the middle watch, had repeatedly desired Mr. Bourne not to make so much noise, as it prevented him from sleeping; and on Mr. Bourne taking no notice of this request, he had ordered the ward-room lights to be put out, which had occasioned very high words, and a challenge between the said Charles Bourne and Mr. Stephenson.

* Those expressions are positively affirmed by the affidavits of Lieutenants Markett and Bourne.

Stephenfon. * And this deponent saith, that conceiving it a point of duty to take notice of such proceedings, this deponent sent for the said Charles Bourne, into his cabin, and asked him in the presence of Major Varlo and Mr. Spry, who were then sitting with this deponent, how he, the said Mr. Bourne, could send up a message to this deponent, to know if this deponent had ordered the ward-room lights to be put out, when he, the said Charles Bourne, knew that this deponent had not given any such orders; to which the said Charles Bourne replied, that he thought this deponent had given such orders, or Mr. Stephenfon would not have done so. And this deponent then told the said Charles Bourne, that he was a very troublesome man, and he went out of the cabin muttering something to himself. And this deponent positively saith, that neither the master, or surgeon, nor Mr. Stephenfon, the second lieutenant, or any of them, were then, or ever had been that evening, in this deponent's cabin, and that nothing that was said or done by the said Mr. Stephenfon, in the ward-room, or that happened between the said Mr. Stephenfon and Charles Bourne, was at the instance of this deponent, nor was this deponent in any manner privy to or knew thereof. † And this deponent also positively saith, that the said Charles Bourne did not repeat any message from the gentlemen of the ward-room to this deponent, nor did this deponent desire the said Charles Bourne to get away, nor say any thing more to him, than that he was a troublesome man, as herein before is mentioned. ‡ And this deponent saith, that the next day this deponent was walking on the larboard side of the quarter-deck, when the said Charles Bourne came up to the deponent with a very assuming air and gesture, and once or twice

* See the affidavits of Lieutenant Markett, Monke, Richardson, Hodge, Mr. Richards, Purser, and the defendant; who were all present; describing this transaction as it really occurred.

† Lieutenant Monke swore positively that he saw Lieut. Stephenfon come out of Sir James Wallace's cabin.

‡ Lieutenant Monke, who was officer of the watch at this time, also positively declares the fallacy of this assertion, and accurately describes the conduct of Sir James Wallace; the defendant himself is not less circumstantial and opposite in his affidavit.

twice passed this deponent in a manner that appeared to this deponent to convey an intended insult to him, or intention to provoke him to take some notice of the said Charles Bourne's behaviour, upon which this deponent called to Mr. Spry, who was then walking on the opposite side of the deck, and said to him, "Mr. Spry, my orders are that Mr. Bourne does not walk with me;" upon which the said Mr. Bourne quitted that side of the quarter-deck where this deponent was walking, and either went to the opposite side of the deck, or into the ward-room, without making any such remonstrance to the knowledge of this deponent, against this deponent's said order, as by his affidavit is alledged. * And this deponent saith, that it is a very unusual thing, and contrary to the custom of the navy, for any officer, or other person on board any of his majesty's ships, to walk or attempt to walk on the quarter-deck with the captain of any of the ships, contrary to his will and pleasure, every captain of any of his majesty's ships of war having an undoubted privilege of walking the quarter-deck, either alone, or with any person on board the ship that he may think proper to walk with. And this deponent positively saith, that he was walking upon the larboard side of the quarter-deck, when the said Charles Bourne came upon that side of the quarter-deck, and absolutely denies, that he either then, or at any other time, on seeing the said Charles Bourne on the quarter-deck, came running out of his cabin in a violent manner, with his fists clenched, to the said Charles Bourne's face, muttering the word scoundrel, or ever with his fists clenched in a menacing and provoking manner, driving the said Charles Bourne from side to side of the said ship, or that during the voyage of the said ship Warrior, from England to Jamaica, the said Charles Bourne experienced from this deponent several or any instances of insult, outrage, and unofficer-like behaviour, as the said Charles Bourne has very

* The absolute control of captains of the navy on board the ships they command is not denied; but it is universally admitted, that a prohibition of this kind is the greatest personal insult that can be offered to a gentleman and a commissioned officer, as the intent is to degrade. The defendant considered it as such, and can never be induced to give up that opinion.

very untruly deposed. * And this deponent also denies that this deponent then walked several times backwards and forwards in a rage, and then went into his cabin and returned, and called for Lieutenant Spry to attend his public orders, or that this deponent ever gave any other orders upon that occasion, or in any other manner than as before mentioned, or then held such conversation with the said Charles Bourne, touching such orders, or that the said Charles Bourne then desired this deponent to confine him in a regular way, as the said Charles Bourne has alledged. And this deponent saith, that in about six days afterwards, the Warrior arrived at Jamaica, and was soon after ordered by Lord Rodney on a cruize to the windward; and this deponent saith, that he believes the defendant then wrote some letter to Lord Rodney, requesting an inquiry into his conduct, and that Lord Rodney soon afterwards ordered the said Charles Bourne from on board the Warrior into the Hector, one of the French ships, taken by him in the engagement on the twelfth of April, for which this deponent has no doubt that Lord Rodney had then his sufficient reasons, but this deponent saith, that if he, this deponent, had then been disposed to bring the said Charles Bourne to a court-martial, or had conceived that implacable hatred against him which he has alledged, he would inevitably have been broke, and for ever dismissed the service, for his repeated disorderly behaviour during the time he was under this deponent's command on board the Warrior, as this deponent verily

* Upon this memorable occasion Lieut. Monke was also present, and the reader is most earnestly requested to attend to his deposition. Sir James Wallace swears that he never did use any such indecent and violent conduct, but it is hoped the concurring depositions of Lieutenants Nicholson and Monke together, with that of the defendant himself, will have that weight with the public which such combined evidence demands; and here it must be observed, that such were the injuries and oppressions which the defendant suffered, and such the intire conviction of the propriety of his own behaviour, that he demanded not only a court-martial upon Sir James Wallace, but an enquiry into his own conduct. The enquiry, if any had taken place, was to have been by captains of men of war, the peers of Sir James Wallace, from whom the defendant had as little reason to expect partiality in his favour, as he had to apprehend any thing short of rigid justice; and it is very observable that at this time Sir James Wallace tried one of the Lieutenants of the ship by a court-martial.—If he had thought the behaviour of the defendant reprehensible, is it probable he would have omitted so favourable an opportunity of doing himself justice?

verily believes. And this deponent further saith, that so far from being ill-disposed towards the said Charles Bourne, this deponent hath on several occasions shewn his lenity and forbearance towards him, and in particular this deponent saith, that soon after the said Charles Bourne embarked on board the Warrior, he asked this deponent's leave to go to London for three days, on particular business, which this deponent told him he could not grant, but that as it was particular business which required his going, and that only for three days, this deponent would take no notice of his absence during that time. And this deponent saith, that the said Charles Bourne accordingly went to London, and did not return again to the ship for fifteen days, which this deponent overlooked. And this deponent saith, that in the dusk of the evening of the fifteenth of May, according to the best of this deponent's recollection as to the time, as this deponent was walking in the street in Port-Royal, in company with Major Varlo, the said Charles Bourne met them, and said that he had something to say to this deponent in private, when this deponent told him that if he had any thing to say to this deponent, to say it before Major Varlo, that he might hear it, for that this deponent would have nothing to say to the said Charles Bourne in private, upon which the said Charles Bourne turned away, saying, it is very well; and which was all that then passed between the said Charles Bourne and this deponent. * And this deponent saith, that he then told Major Varlo what he, this deponent, apprehended the said Charles Bourne then meant, and also this deponent's own sentiments and intentions thereon. And this deponent saith, that on or about the seventeenth day of May, the Warrior sailed on a cruize to the windward, from which she returned in about two months; and this deponent being at that time in a bad state of health, found it necessary for his recovery to go to Europe; and his majesty's ship Resolution being then under orders to sail for England, this deponent was on or about the twelfth day of July, appointed by Lord Rodney to the command of the said ship. And this deponent saith, that on or about the

* The public would no doubt have been very much indebted to Sir James Wallace, if he had been equally communicative and candid to them also.

the twentieth of July, being two days before he was to sail from Port-Royal for England, as he, this deponent, walking up a narrow lane in Port-Royal, the said Charles Bourne came out of a negro hut, and asked this deponent if he had any thing to say to him, to which this deponent answered he had not; and the said Charles Bourne then replied, he had something to say to this deponent if he would walk with him in private, upon which the said deponent told the said Charles Bourne, that he was determined never to have any thing to say to him in private.* And this deponent thereupon putting his hand upon his sword, told the said Charles Bourne to say before Captain Fisher of the Navy (who was then with this deponent) what he would be at, upon which the said Charles Bourne left them, making use of some abusive language, and joined an officer of marines, who was then at some distance from them. And this deponent absolutely denies that he then promised, or said to the said Charles Bourne, that he, this deponent, would do his duty, and that the said Charles Bourne should hear from this deponent, or that any such words then passed, or any thing more than happened between the said Charles Bourne and this deponent, than as before mentioned. And this deponent saith, that as he was then ready to sail for England, this deponent did not think it necessary or requisite for him to stay there for any further explanation from the said Charles Bourne. And this deponent saith, that he did not remain on the said island for some weeks after, for that in two days afterwards, according to the best of this deponent's recollection, this deponent sailed from Port-Royal, and arrived at Portsmouth on or about the twenty-sixth of September following. And this deponent saith, that some little time afterwards he went to Bath for his health, and in the beginning of December this deponent had fixed to return to London with his family, and his house at Bath was let to another family, and about two days before he was to have left Bath, a waiter from the White Hart Inn came to this deponent into his dining-room, where he was sitting with

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Lady

* See the depositions of Captain Green and Bourne, Lieutenants Johnson, Peacock, and Robinson, and Mr. Wear, Surgeon of the London; how differently those gentlemen describe this meeting, which was, in truth, while Sir James Wallace retained his command of the Warrior.

Lady Wallace, and delivered a verbal message to this deponent, that a gentleman wanted to speak to this deponent at the White Hart; and this deponent then asked the waiter, who the gentleman was, and what was his name, which the waiter told this deponent he did not know, but that he had a foreign servant with him. And this deponent told the waiter to go back and ask the gentleman his name. And this deponent saith, that the said waiter some little time after returned, and told this deponent that the gentleman would not send his name, but desired to know whether this deponent would go to him or not; upon which this deponent said he most certainly would not go to any one who would not send his name. And this deponent saith, that the waiter soon afterwards returned, and told this deponent that the gentleman's name was Bourne, upon which this deponent said that he had no business with that gentleman. And this deponent saith, that some time afterwards the same waiter brought this deponent the letter, or paper writing, from the said Charles Bourne, of which the following is a copy:

“ Mr. Bourne acquaints Sir James Wallace, that if
 “ he persists in not seeing him, it will confirm the opinion
 “ Mr. Bourne has long entertained that Sir James Wal-
 “ lace is destitute of every principle of honour, and
 “ idea of a gentleman. Mr. Bourne understanding that
 “ Sir James Wallace has ladies with him, is the reason
 “ he does not call on him in person.”

White-Hart, Friday Noon, Dec. 6th. 1782.

Sir James Wallace.

And this deponent saith, that as the said Charles Bourne had been before acquainted, that this deponent was determined not to have any private interview with him, this deponent therefore apprehended, that the said Charles Bourne had some dishonourable design against this deponent, and therefore thought it necessary to put himself upon his guard, and accordingly took his pistols in his pocket, when he went out the next morning. And this deponent saith, that after he had walked about for some time, in the public streets and places, and was on his

his return home, in the street where he lodged, he saw the said Charles Bourne, at the distance of about one hundred yards, in company with captain Webber of the marines, walking down the street, towards this deponent, and that the said captain Webber, upon seeing this deponent, left the said Charles Bourne, and kept at some distance, whilst the said Charles Bourne walked towards this deponent*. And this deponent saith, that as soon as the said Charles Bourne came within a few paces of this deponent, he began to accost this deponent with saying, that he had been looking for him, and was glad he had met with him at last, upon which this deponent interrupted him by saying, I can have no conversation with you, Sir. And this deponent doth acknowledge, that he did thereupon make use of these further expressions, Send your friend, propose your terms, I am provided for you, and this deponent thereupon took one of the pistols out of his pocket, and shewed the same to the said Charles Bourne, and told him to take care how he insulted this deponent, for if he intended to insult him, he would instantly put him to death, upon which the said Charles Bourne retreated to some distance, and then uttered the most foul and scandalous abuse.

And this deponent saith, that he thereupon went immediately to the lodgings of captain Nugent of the navy, who was then at Bath, to request him to be present with this deponent, in order to bear testimony what the said Charles Bourne might have to say to this deponent, in case he should send any message to this deponent, in consequence of what this deponent had then said to him in the street. And this deponent, not meeting with captain Nugent at home, went immediately to admiral Sir Peter Parker's, to communicate the subject to him, and where this deponent met captain Nugent, who in a very friendly manner offered to be present at any interview this deponent might have with the said Charles Bourne. And this deponent saith, that he afterwards walked into
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* The defendant's deposition, as to this meeting and conversation, fully contradicts this account, and the reader will recollect that Sir James Wallace is now swearing to re-establish his reputation as a man of courage and a gentleman, against which, Mr. Bourne brought a public charge.

the Crescent, where he met Mr. Abbott, a lieutenant in the navy, who came home with this deponent from the West-Indies, as first lieutenant of the Resolution. And the said Mr. Abbott, in conversation asked this deponent if he had seen Mr. Bourne, on which this deponent told the said Mr. Abbott of all that had passed between the said Charles Bourne and this deponent, and at the same time asked him, in case captain Nugent should be prevented by an engagement at the time, to be present at any interview this deponent might have with the said Charles Bourne, which he very readily promised to do, and continued with this deponent all that day. And this deponent saith, that upon his return home to dress before dinner, he received another letter from the defendant, Charles Bourne, of which the following is a copy, "Sir, " I yesterday, by letter, acquainted you, that I considered you as destitute of every principle of honor and " every idea of a gentleman—Your infamous behaviour " this morning in the street, convinces me, that you " are a dastardly coward and scoundrel—When I was " in the ship you commanded, you treated me with the " most unmerited insolence and abuse, because you knew " that it was not in my power, from my situation at that " time, to resent it; when no longer under your command, I seized the first opportunity that offered, at " Jamaica, of demanding that satisfaction which an injured *gentleman* has a right to expect; but you meanly " and cowardly retreated from my resentment at that " time, by giving me to understand, that I should hear " from you, but in that you proved yourself a liar. " I flew to Bath immediately on my arrival in England, " my messages and notes to you yesterday must have " convinced you of my intentions, but you dared to offer insults at a time, when you knew they could not " be resented; you have not resolution to meet the man " whom you have so greatly injured—your flying from " Bath, shall not protect you from my resentment; the " insults I have received from you are too great to be " forgotten or forgiven. I will expose you in the public prints, as the scoundrel I know you to be, and " treat you as such wherever I meet you, for which " purpose

" purpose I will follow you to London, or any part of
 " world,

White-hart, Dec. 7, 1782.

Charles Bourne."

" To Sir James Wallace."

Which letter this deponent shewed to the said Mr. Abbott, whilst he was at dinner with this deponent, and afterwards advised with him upon the contents of it, which in the opinion both of this deponent and the said Mr. Abbott, was no answer to what had passed between this deponent and the said Charles Bourne, and as it did not appear to this deponent, that the said Charles Bourne had any intention of being more explicit, or that his designs were honourable to this deponent, this deponent resolved not to detain his family there any longer, on his account, and accordingly left Bath the next day, about one o'clock, agreeable to his prior engagement*. And this deponent saith, that soon after his arrival from Bath, this deponent was informed, that the said Charles Bourne had most shamefully traduced this deponent's name and character, and done every thing that he could devise, to prejudice the minds of the public against this deponent; That he had declared, that whilst he was on board his Majesty's ship the Warrior, and under this deponent's command, this deponent had holden his fist up at him, called him a scoundrel, told him if he loved fighting, he would make him shit bullets, and that at Jamaica, he, the said Charles Bourne, had challenged this deponent, and that this deponent had refused to fight him, that he, the said Charles Bourne, had seized the deponent by the collar there, and torn his collar, and that after his arrival in England, he had again challenged this deponent at Bath, and that this deponent had refused to fight him there; and that he had caned this deponent there; and and that on his return to London, he had sent Lord Cork to this deponent with a challenge, which this deponent had

* Does Sir James Wallace mention this as a serious, natural conclusion from the defendant's subsequent letter, and from his calling at his house after their meeting.

had also refused. And this deponent positively saith, and most positively declares, that all, and every, the said several assertions and declarations, of the said Charles Bourne, were, and are, absolutely false and untrue. But this deponent saith, that finding at this time, that the said Charles Bourne had involved his dispute with this deponent with sundry falshoods, to prejudice the minds of any person, who heard the same against him, this deponent therefore thought it indispensably necessary to have the matter enquired into, and with that view wrote a letter of complaint, against the said Charles Bourne, to the lords of the admiralty, who acquainted this deponent, that he should before have represented the said Charles Bourne's behaviour to the commanding officer, that a court-martial might have been assembled to try him for the same; and this deponent saith, that a publication having appeared in the Morning Herald, of the sixteenth of December last, casting very pointed, scandalous aspersions upon this deponent's character, and this deponent verily believing that the same was written and published by the said Charles Bourne, and having been informed that the said Charles Bourne was then going about, from one coffee house to another, and in every place most maliciously publishing various false and scandalous reports, with an intent to vilify this deponent, and to impeach his veracity, courage, and honor, this deponent, in order to prevent reports so injurious to his character and honor, from having the effect designed by the said Charles Bourne, wrote the letter published by him, in the Morning Herald of the twenty-first of December last, as this deponent was not at that time in possession of proof to convict the said Charles Bourne of being the author of such falshoods*; but this deponent saith, that soon afterwards, obtaining sufficient proof of the same, and, in particular, that the Right Honourable the Earl of Cork, who, the said Charles Bourne had asserted, had waited upon this deponent with a message from the said Charles Bourne, had never even undertaken to wait upon this

* Sir James Wallace here acknowledges himself to have been the *original* libeller, yet the Court of King's-bench did not hesitate to fine the defendant for that offence *sol.*

this deponent with any such message, therefore this deponent, conscious of the falshood of the several reports which had been propagated, to vilify and traduce his name and character, commenced the present prosecution against the said Charles Bourne, to bring his veracity to a public trial. And saith, that long before the said Charles Bourne made the assault upon this deponent, of which he stands convicted, in the public street, the said Charles Bourne had been informed, and knew, that he had defamed and traduced this deponent; and he hath been told both by Mr. Dundas, a captain, and Abbot, a lieutenant in the navy, that he had never sent any gentleman with a message to this deponent, as he had asserted; and he had also been told, that the Right Honorable the Earl of Cork had contradicted the report which he had propagated, of his lordship's having waited upon this deponent with a message from him, and tha this lordship had also disavowed his ever having either waited, or undertaken to wait upon this deponent, with any such message; and the said Charles Bourne had, in presence of captain Cruikshanks, of the thirty-sixth regiment of foot, asked his lordship's pardon for having made such use of his name. And the said Charles Bourne also very well knew that a prosecution was carrying on against him, in this honourable court, by this deponent, in order to convict him of all his false assertions, and that the same would go before the grand jury in a few days, at the time he made this attack upon this deponent, for which, as well as for his false and scandalous libel upon this deponent, he stands to receive the judgment of this honorable court.

James Wallace.

*Sworn at my chambers
in Serjeant's-Inn,
July 1, 1783.*

E. WILLES.

THE

THE KING

On the PROSECUTION of

SIR JAMES WALLACE, KNT.

AGAINST

LIEUT. CHARLES BOURNE.

AFFIDAVIT. No. II.

SIR JAMES WALLACE, of Hanworth, in the county of Middlesex, Knt. and William Sleigh, of Whitehall, Westminster, in the same county, Esq. jointly and severally make oath and say, that some time in or about the month of August, one thousand seven hundred and eighty-one, these deponents, between seven and eight o'clock, one evening, in company with William Thompson, Esq. the commander of the ship Calcutta, in the service of the East-India Company, and who is now in the East-Indies, or China, as this deponent believes, were going to take a boat at Whitehall-stairs, and that upon the causeway, leading from the stairs at Whitehall, into the bed of the river, where the boats lay at low water, which it then was, these deponents found a man walking down the side of the river, with two children on the one side of him and a dog on the other, and in order to pass them upon the causeway, which could not be conveniently or easily done, without making the dog either go forwards or to one side, the deponent, Sir James Wallace, gave the dog a stroke with his stick for that purpose, when the man, whom these deponents afterwards found to be a Mr. Murphy, who then lived in apartments or lodgings, in the upper part of the chapel stair-case, at Whitehall, began to make use of very uncivil and abusive language, and with his fist struck this deponent, Sir James Wallace,

* See the affidavit of Mr. Murphy and John Jackson, and Mr. Bourne, describing this affair.

lace, a blow in his face, which bruised and a little cut one of his lips, whereupon this deponent, Sir James Wallace, immediately seized upon the said Mr. Murphy, in order to correct and punish him, for his insolent behaviour, which occasioned a little scuffle between said Murphy and this deponent, Sir James Wallace, which was immediately put an end to, by the interposition of the said William Thompson, and this deponent, William Sleigh, and the said Mr. Murphy went away towards Whitehall, and this deponent, William Sleigh, attended him, to know who he was, and where he lived, and this deponent, Sir James Wallace, and the said William Thompson, followed them to the said Murphy's lodgings, up the chapel stair-case, at Whitehall, where they found the defendant Bourne, and upon this deponent, Sir James Wallace's, reprehending the said Murphy for his rude and insolent behaviour, the defendant Bourne, with great warmth and fury, took part with the said Murphy and attempted to justify his conduct, upon which these deponents believe, that this deponent, Sir James Wallace, might ask the defendant Bourne, if he wanted to take the quarrel upon himself, but both these deponents deny, that this deponent Sir James Wallace then seized the defendant Bourne by the breast, and demanded to know if he would fight, but these deponents say, that there were very high words on both sides, and that the said Murphy, or the defendant Bourne, demanded, as these deponents then knew where to find them, to know who these deponents, and the said William Thompson, were, which was told them, when they both immediately expressed the greatest contrition for what had happened, and the said Mr. Murphy wished his dog had been in the Thames*. And this deponent, William Sleigh, for himself saith, that in a day or two afterwards, according to the best of this deponent's recollection, as to the time, a letter was left at this deponent's house, at Whitehall, addressed to the said Sir James Wallace, who was then in the country, and sealed with a wafer, upon which there appeared an impression of a cypher of two letters, one of which being an M. lead this deponent to suppose, the said letter might have been sent by the said Mr. Murphy, and therefore this deponent called upon the defendant

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Charles

* For the contradiction of these facts see the joint affidavits of Mr. Murphy and John Jackson.

Charles Bourne, and shewed him the said letter, and asked him if it was written by the said Mr. Murphy, when the said Mr. Bourne informed this deponent it was not, and this deponent then told him if it had, this deponent would not have sent the same to the said Sir James Wallace, who was then at his house at Harworth, as he did not choose to trouble him about such a ridiculous affair, and the said Charles Bourne then said to this deponent, that he was very sorry that such a thing had ever happened; but this deponent denies that he intreated the said defendant, Charles Bourne, to interfere, as he had done before, to prevent the consequences that might attend the said Sir James Wallace's meeting with the said Mr. Murphy, or that this deponent was much distressed about the same. And this deponent saith, that he was not then apprehensive of any further difference between the said parties, as the said Mr. Murphy had, before they parted, expressed his concern for what had happened*. And this deponent, Sir James Wallace, for himself saith, that he, some little time afterwards, received a letter from the said Mr. Murphy, of which the following is a copy.

S I R,

Whitehall-chambers,
Sep. 19, 1781.

Extraordinary accidents are generally productive of extraordinary effects, perhaps no one ever more so than in the present instance, that which occurred between you and me at Whitehall-stairs; notwithstanding that accident, I continue to retain the highest esteem for Sir James Wallace, and as a proof have adopted this method of becoming debtor to his goodness.

A very deserving youth, of sixteen years of age, who has been three years at sea, and is esteemed a good seaman, wants very much to be rated a midshipman, he is a young fellow of spirit, and am convinced under the patronage

* If Mr. Sleight was not apprehensive of the consequences of the letter, why did he hesitate giving it to Sir James Wallace, and call on Mr. Bourne, to enquire whether Mr. Murphy had sent it? and if Mr. Murphy and Mr. Bourne had expressed contrition for what had happened, why should the initial M, marked on the letter, prevent Mr. Sleight giving, or sending it, as he would any other letter, to Sir James Wallace? Had Mr. Murphy expressed contrition, what danger could there have been in a letter subsequent to such contrition?

patronage; and from the example of Sir James Wallace, would be of service to his country. After this, I need only assure you, Sir, that I remain with great respect;

Your most obedient, humble servant,

Ar. Charters Murphy.

Both sworn at my chambers

in Serjeant's-inn,

July 1, 1783.

E. WILLES.

JAMES WALLACE.

W. SLEIGH.

AFFIDAVIT of Lieutenant SPRY. No. III.

THOMAS SPRY*, of Portsmouth, in the county of Hants, gentleman, a lieutenant in his Majesty's royal navy, maketh oath and faith, that he was appointed the first lieutenant of his Majesty's ship the Warrior, under the command of Sir James Wallace, upon, or very soon after the said Sir James Wallace's being appointed to the command of the said ship, and that this deponent continued to be the first lieutenant of the said ship, from that time, during the whole of her voyage to the West-Indies, and until, or about the fifteenth day of May, one thousand seven hundred and eighty-two; when this deponent was appointed a lieutenant of his Majesty's ship, the Barfleur, then at Jamaica, under the command of Lord Hood, and lately arrived at Spithead, and of which ship this deponent is still a lieutenant. And this deponent faith, that the defendant, Charles Bourne embarked, as first the lieutenant of marines, on board the said ship the Warrior, some time in the month

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* The conduct of this man was so exceptionable while on board the Warrior, that the officers of the ward-room unanimously expelled him from their mess, and, as far as possible, from their society; holding it disgraceful to converse with him, unless when the duties of service made it indispensably necessary. In consequence of this degradation, Sir James Wallace admitted him to his mess, and had him removed into the Barfleur, to protect him from that contempt and obloquy which his conduct had rendered him obnoxious, on board the Warrior.

of November, one thousand seven hundred and eighty-one, according to the best of this deponent's recollection as to the time. And this deponent saith, that at that time there were several other marine officers, who were very desirous of serving on board the said ship, and that the said Charles Bourne, who very soon after his coming on board the said ship, became very intimate with this deponent, frequently expressed to this deponent, how exceedingly happy he was in being ordered on board the said ship, and that he had the *highest opinion and respect for Sir James Wallace, and would not, on any consideration, that he should have missed, or lost his chance of being on board his ship**. And this deponent further saith, that some little time after the said Charles Bourne had embarked on board the said ship, he informed this deponent that he wished to go to London for two or three days, and supposed that if he asked Sir James Wallace's leave he would have no objection to it. And this deponent saith, that the said Charles Bourne afterwards went to London, as this deponent believes, but did not return to the said ship for upwards of a fortnight, according to the best of this deponent's recollection as to the time, and that the said Charles Bourne, upon his return, told this deponent that he had staid longer in town than he ought to have done, and had hurried down for fear of being left behind, which would have distressed him very much†; and this deponent then told him, as he had arrived in time, before the ship sailed, this deponent knew that Sir James Wallace would take no notice of his having exceeded his time of absence, but thought that he ought to make some apology to the said Sir James Wallace for having done so. And this deponent saith, that the several officers belonging to the said ship, the Warrior, were at that time living in perfect harmony and friendship with each other and continued so to do, until some little time after they

* For a contradiction of this, see the affidavits of Lieutenants Sweeney, Markett, Monke, and Bourne, which fully describe the feelings of Mr. Bourne, on being ordered on board the Warrior.

† At this time the ship had not got in her masts, was lying in the harbour, and Sir James Wallace was in London, therefore Mr. Bourne could not possibly have entertained any apprehension of being left behind.

they left Madeira; for this deponent saith, that they arrived at Madeira, some time on or about the first or second of February, one thousand seven hundred and eighty-two, according to the best of this deponent's recollection as to the time, and that the said Sir James Wallace, on his going ashore there, left orders with this deponent, that he might give any of the officers belonging to the ship, leave to go ashore in the day time, but that they were to return at night and sleep on board, observing to this deponent, that as the combined fleets were then out, some of their ships might come in there and seize the said ship the Warrior by surprize, which would be a great disgrace to them. And this deponent saith, that he afterwards communicated the above orders to the several officers belonging to the said ship, and that the said Charles Bourne expressed great dissatisfaction, and murmured very much at the said order, and for which this deponent told him he thought him highly blameable, and that their being permitted to go on shore whenever they pleased, in the day time, was a great indulgence. And this deponent saith, that on Saturday, the second of February, according to the best of this deponent's recollection as to the time, the said Charles Bourne, and Mr. Markett, then third lieutenant of the said ship, went on shore, with this deponent's leave, and that before they left the ship, this deponent told them, that he would send off a boat for them in the evening, before sun-set, to bring them on board again, but this deponent saith, that they did not return again to the ship until Monday following about noon. And this deponent saith, that he hath been informed and believes, that the said Charles Bourne and Mr. Markett went to the theatre there, on the Sunday evening, to see the comedy, and were in the pit with their hats on, and that a message was sent to them by the governor of Madeira, who was then in the theatre, to desire they would take off their hats, it being the custom there for the audience to sit uncovered during the comedy, and that the said Charles Bourne and Mr. Markett refusing to take off their hats, a serjeant then on duty was sent by the governor to take off their hats, and that they were thereupon obliged to go out of the theatre, and afterwards got into disorderly houses, and several riots and quarrels with

the inhabitants, and that they were pelted with stones and otherways very roughly treated by the inhabitants*. And this deponent saith, that he hath been informed and believes, that the said Charles Bourne and Mr. Markett, or one of them, after they returned on board, wrote and sent a letter to the said Sir James Wallace, who was then ashore at Mr. Murray's the British consul, thanking him for his polite introduction of them to the governor of Madeira, and acknowledging themselves indebted to him for the civilities and polite treatment, which they had received from the inhabitants whilst on shore. And this deponent saith, that the said Sir James Wallace returned on board the said ship the evening before they sailed from Madeira, and that he then shewed the said letter to this deponent, and that the next morning, being the seventh of February, according to the best of this deponent's recollection, as to the the time, soon after the Warrior had sailed from Madeira, the said Sir James Wallace desired major Varlo and this deponent to go into his cabin, and then sent for the said Charles Bourne and Mr. Markett into his cabin, and after having ordered all the servants to go out, shewed the said letter to the said Mr. Bourne and Mr. Markett, in the presence of major Varlo and this deponent, who were the only persons then in the cabin with them, and asked them if the same was their writing, when the said Charles Bourne said, Yes, that it was, upon which the said Sir James Wallace asked him, what they meant by it, and whether they meant it as an insult, and if they did, it was very ungentlemanlike behaviour, for two of them to join in such a note to him, when the said Charles Bourne made answer, that they thought he thought he had not used them well, for that in consequence of his not having taken proper notice of them on shore, and introducing them to the governor of Madeira, they had been very *ill-treated by the inhabitants*, upon which the said Sir James Wallace said to them, that if those were their sentiments, he and they could be no longer acquainted with each other, or words to that purport or

* Here lieutenant Spry swears only from belief and hearsay, but his belief is fully contradicted, and his assertion fully falsified, by the affidavits of lieutenants Markett, Monke, Hodge, Bourne, and Mr. Richards, purser.

or effect*. And this deponent positively saith, that the said Sir James Wallace did not then, or at any other time, that this deponent ever heard of, put the following, or any other such question to the said Charles Bourne, viz. "Why, if you thought yourself aggrieved, or affronted, did you not call me out," or use any other words to that or the like effect.† And this deponent saith, that from that time, various disputes and dissensions happened, and parties were formed amongst the officers of the ward-room, and which, this deponent verily believes, *were occasioned by the said Chaeles Bourne*, who endeavoured as much as he could to prejudice the minds of the officers against the said Sir James Wallace, and was, as this deponent believes, the cause of all the disturbances which afterwards happened on board the ship‡. And this deponent further saith, that between ten and eleven, in the night of the twenty-fourth of April, one thousand seven hundred and eighty-two, according to the best of this deponent's recollection as to the time, this deponent was with Sir James Wallace and major Varlo in Sir James Wallace's cabin, when, after some disturbance which they heard in the ward-room, one of the servants of the ward-room brought up a message to Sir James Wallace, to know if he had ordered the ward-room lights to be put out, upon which the said Sir James Wallace desired this deponent to

* The decided part which lieutenant Spry has taken in this business against Mr. Bourne, is amply accounted for in the first note to this affidavit, and the sedulous and partial conduct of major Varlo in support of Sir James, it is presumed, will sufficiently justify Mr. Bourne in concluding, that they were selected to attend this interview, for the special, though dishonourable purpose, of qualifying to serve Sir James as witnesses on a court-martial, in case Mr. Bourne, or Mr. Markett, had acted incautiously, or had been provoked into any rash expression.

† Messrs. Markett and Bourne positively swear, that Sir James Wallace did say so, and the *affirmative* oaths of two men, whose characters stand unimpeached, must undoubtedly weigh against the oath of this man, who, in consequence of his expulsion from the ward-room mess, and his obligations to the prosecutor, swears under the influence of resentment and personal favours.

‡ This paragraph fully illustrates the preceding note. Here the man *feels* for himself, and to palliate the disgrace of expulsion from the ward-room mess, he insidiously transfers a part of it to his *patron* and friend Sir James, by stating, that the *minds* of the officers were prejudiced against him. See the joint affidavits of the officers.

to go down into the ward-room and enquire what was the matter there ; and this deponent saith, that upon going out of the cabin he at the door met the boy, who had brought up the message, and asked him who sent up the message, when he told this deponent, that Mr. Bourne had ordered him to come up with such message in the name of the gentlemen of the ward-room.

And this deponent saith, that upon his entering the ward room he found the said Mr. Bourne walking up and down, and seemingly in a great passion, and very much discomposed ; that this deponent then saw no other officer belonging to the ward-room there, and out of bed, according to the best of this deponent's recollection and belief, and upon this deponent asking the said Mr. Bourne what was the matter, and why he had sent up such a message to the captain, the said Charles Bourne told this deponent, that Mr. Stephenson, the second Lieutenant, had used him very ill, and had ordered the ward-room lights to be put out, which occasioned him to send up the said message to the captain, upon which the said Mr. Stephenson, who was then in his cot, in the ward-room, and perfectly sober, for this deponent saith, that he never remembers, during the whole time he was on board the Warrior, to have seen him intoxicated with liquor, told this deponent that the said Charles Bourne had been making a very great noise and disturbance, and that he, the said Mr. Stephenson, had desired him to desist, as he had the middle watch ; and the said Charles Bourne disturbed and prevented him from going to sleep, and that as the said Charles Bourne would not desist, he, the said Mr. Stephenson had ordered the ward-room lights to be put out, which had produced very abusive language from the said Charles Bourne, and an appointment to settle the business between them the next morning, and this deponent saith, that the said Charles Bourne appeared to this deponent to be very much disgusted, and made no reply to what the said Mr. Stephenson then told this deponent, and this deponent saith, that he went back to, and informed the said Sir James Wallace of the same, upon which he immediately ordered one of the servants to desire Mr. Bourne to come up to him in his cabin, which the said Charles Bourne accordingly did, when
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the said Sir James Wallace asked the said Charles Bourne, how he could send up a message to him, the said Sir James Wallace, to know if he had ordered the ward-room lights to be put out, when he, the said Charles Bourne, said that he thought he was very ill-used, by having the lights put out, and supposed it had been done by the order of Sir James Wallace, which was the reason of his sending up the said message; and the said Sir James Wallace thereupon told the said Charles Bourne that he was a very troublesome man, at which the said Charles Bourne seemed very much displeased, and in a fullen and dissatisfied manner went out of the cabin, muttering something to himself. And this deponent saith, that no other person or persons, except the said *Major Varlo and this deponent*, were then with the said Sir James Wallace in his cabin, and that neither the master or the surgeon of the said ship were then, or ever had been there that evening, for that the master of the said ship was then confined to his bed in the gun room, having lost his leg about a fortnight before that time in the engagement between the English and French fleets, on the twelfth of April, 1782. And this deponent saith, that he had spent the whole of the evening with the said Sir James Wallace in his cabin, and that Mr. Stephenson, then acting second lieutenant of the said ship, had never been in the said cabin during the whole of that night. And this deponent absolutely denies that the said Charles Bourne, at the time that he came into the said Sir James Wallace's cabin, or during any part of the time that he was there, repeated to the said Sir James Wallace any message from the gentlemen of the ward-room, with their respective compliments, or any other message whatsoever from them, or made any other answer or reply to the said Sir James Wallace, or that the said Sir James Wallace asked any other question of, or made any other reply, to the said Charles Bourne than as is herein before mentioned, according to the best of this deponent's recollection and belief. And this deponent saith, that Mr. Stephenson, who succeeded the said Mr. Markett, as second lieutenant of the said ship, during the whole time that this deponent was on board the said ship, behaved himself as a very sober, regular,

lar, and good officer, and was not in the least addicted to drinking, or habits of intoxication, and that this deponent never heard, or does he know or believe that the said Mr. Stephenson the next morning requested the gentlemen of the ward-robe to attend, while he declared his concern for his behaviour the preceding evening to the said Charles Bourne, or that the said Mr. Stephenson then declared that he was drunk, and sorry for what had happened, and entreated the said Charles Bourne's pardon and forgiveness; for this deponent saith, that if any such thing had ever happened on board the said ship, this deponent must have either seen or heard of the same. And this deponent saith, that the next day, as this deponent was walking on the starboard side of the quarter-deck with the defendant Bourne and some other officers of the said ship, Sir James Wallace was walking at the same time alone, on the larboard side of the deck, and the said Charles Bourne left this deponent and crossed over to the larboard side of the deck, and throwing his arms about in a swaggering, gesturing manner, passed the said Sir James Wallace once or twice in that manner, swinging his arms about, and that the said Sir James Wallace stepped aside on the midship grating, and called to this deponent and said, Mr. Spry, my orders are, that Mr. Bourne does not walk with me, or words to that effect, and thereupon turned away from the said Charles Bourne. And this deponent saith, that some time afterwards, on the same day, whilst the said Sir James Wallace was upon the starboard side of the quarter-deck, the said Charles Bourne went up to him there, and asked him if he meant to turn him off the deck, or confine him; to which the said Sir James Wallace answered him no, but that after having treated him with so much disrespect he did not chuse that he should walk with him, or words to that effect or purport, and which were all the words, according to the best of this deponent's recollection and belief, which passed between the said Sir James Wallace and the said Charles Bourne. And this deponent saith, that in or about six days afterwards the Warrior arrived at Jamaica. And this deponent positively saith, that he never saw or heard, nor doth he know, or in his conscience believe, that the said Sir James Wallace either then,

or

or at any other time, during the whole voyage of the said ship the Warrior from England to Jamaica, ever came running out of his cabin on seeing the said Charles Bourne on the quarter-deck with his fists clenched to the said Charles Bourne's face, muttering the word scoundrel, or even with his fists clenched in any manner whatsoever, driving the said Charles Bourne from side to side of the ship, as the said Charles Bourne has most unjustly and untruly deposed. And this deponent saith, that during the whole of the voyage of the said ship the Warrior from England to Jamaica, this deponent never saw, nor did he ever hear, nor doth he know or believe, that the said Sir James Wallace ever made use of any abusive, insulting, or uncivil language, to the said Charles Bourne, or ever treated the said Charles Bourne ill, in any respect whatsoever, or that the said Charles Bourne ever experienced from the said Sir James Wallace any instances of insult, outrage, abuse or unofficerlike behaviour. And this deponent saith, that if any such thing had ever happened on board the ship, this deponent must have either seen or heard of the same, as he verily believes,

S P R Y.

*Sworn at my chambers
in Serjeant's-Inn,
July 1, 1783.*

E. WILLES.

AFFIDAVIT of WILLIAM VARLO, Esq; No. IV.

WILLIAM VARLO, of Portsmouth, in the county of Hants, Esq; a major in his Majesty's marine forces, maketh oath and saith, that he, this deponent, was the commanding officer of the marines, embarked on board his Majesty's ship the Warrior, under the command of Sir James Wallace, and that the defendant, Charles Bourne, was the first lieutenant of the said marines, under this deponent's command. And this deponent saith, that the said ship the Warrior sailed from Portsmouth on or

about the eleventh of January, one thousand seven hundred and eighty-two, on her voyage to the West-Indies, and in the course of such voyage touched at Madeira, on or about the first of February following, and that whilst the said ship was lying in the road of Madeira, the said Sir James Wallace, on his going ashore, left orders with Mr. Spry, his first lieutenant, that the officers belonging to the ship might go ashore in the day-time, but that they were to return, and sleep on board every night. And this deponent saith, that the said Charles Bourne dined with the said Sir James Wallace, at the British consul's at Madeira, one day during their stay there, and that the said Sir James Wallace gave the said Mr. Bourne leave to sleep on shore that night, but that the said Charles Bourne did not return to the ship the night following, but continued on shore two nights; and after he returned to the ship, sent a note, or letter, to the said Sir James Wallace, thanking him for his polite introduction of him to the governor of Madeira, and insinuating that he was indebted to him for all the civilities which he had received, and the polite treatment that he had experienced from the inhabitants whilst he was on shore. And this deponent saith, that the said Sir James Wallace shewed the said note or letter to this deponent, and asked this deponent what he thought of the said letter, and in what light this deponent considered the same, when this deponent expressed his surprize at the said letter, and knowing that the said Sir James Wallace had not introduced the said Charles Bourne to the governor of Madeira, this deponent told the said Sir James Wallace, that he, this deponent, could not consider the said letter in any other light, than as an intended insult. And this deponent saith, that the day after said ship sailed from Madeira, the said Sir James Wallace sent for the said Charles Bourne into his cabin, and in the presence of this deponent and Mr. Spry, shewed the said Charles Bourne the said letter, and asked him if he had sent the said letter to the said Sir James Wallace, and in what light he, the said Sir James Wallace, was to consider the same, and whether it was meant as an insult. And this deponent saith, that the said Charles Bourne thereupon told the said Sir James Wallace, that the said Charles

Charles Bourne imputed all the bad usage which he had received from the inhabitants whilst on shore, so the inattention of the said Sir James Wallace towards the said Charles Bourne, and his not introducing him to the Portuguese governor as a British officer; upon which the said Sir James Wallace told the said Charles Bourne, that if he thought so, he, the said Sir James Wallace from that, could be no longer acquainted with him, the said Charles Bourne. And this deponent further saith, that after the engagement of the twelfth of April, between the English and French fleets, the Warrior sailed with Lord Hood's Squadron for Jamaica, but separated from the said Squadron on or about the twenty-first of April, and did not join it again until they arrived at Jamaica. And this deponent saith, that on or about the twenty-fourth or twenty-fifth of April, whilst this deponent was sitting with Sir James Wallace and Mr. Spry, his first lieutenant, in the cabin, between ten and eleven o'clock at night, they heard a very great noise in the ward-room, and one of the servants belonging to the ward-room, brought up a message from the said Charles Bourne to the said Sir James Wallace, to know if the said Sir James Wallace had ordered the ward-room lights to be put out, upon which, the said Sir James Wallace told Mr. Spry to go down into the ward-room and enquire what was the matter. And this deponent saith, that the said Mr. Spry accordingly went down into the ward-room, and soon afterwards returned, and told the said Sir James Wallace, that the said Charles Bourne had been making a very great noise in the ward-room, and that Mr. Stephenson, the second lieutenant, who was then in bed, and was to turn out to keep the middle watch, had desired the said Charles Bourne not to make so much noise, as it prevented him, the said Mr. Stephenson, from sleeping; and that the said Charles Bourne having taken no notice of the said Mr. Stephenson's request, the said Mr. Stephenson had ordered the ward-room lights to be put out, which had occasioned very high words and bad language between the said Mr. Bourne and Mr. Stephenson, and that they had challenged each other, when the said Mr. Bourne sent up the said message to the said Sir James Wallace. And this deponent saith, that the said Sir James

James Wallace thereupon ordered one of his servants to go down into the wardroom and desire the said Charles Bourne to come up to him in the cabin; and that the said Mr. Bourne accordingly came up into the cabin, when the said Sir James Wallace asked him before this deponent and the said Mr. Spry, how he, the said Charles Bourne, could send up a message to the said Sir James Wallace, to know if he had ordered the ward-room lights to be put out, when he, the said Charles Bourne, knew that the said Sir James Wallace had not given any such orders, and that the said Sir James Wallace desired to know what the said Charles Bourne meant by sending up to him such a message, when the said Charles Bourne told the said Sir James Wallace, that he, the said Charles Bourne, thought that the said Sir James Wallace had given such orders, or that the said Mr. Stephenson would not have done it; upon which the said Sir James Wallace told the said Charles Bourne, that he was a very troublesome man. And this deponent saith, that the said Sir James Wallace made use of no other words or language to the said Charles Bourne; and the said Charles Bourne thereupon went out of the cabin, muttering something to himself. And this deponent saith, that in the evening of the next day, the said Charles Bourne sent a message to this deponent, desiring to speak with this deponent in the ward-room, and that on this deponent's going down into the ward-room, the said Charles Bourne told this deponent, that the said Sir James Wallace has ordered that he the said Charles Bourne should not walk on the same side of the quarter-deck with him, the said Sir James Wallace, and that he, the said Charles Bourne, then considered himself a prisoner, upon which this deponent told the said Charles Bourne, that he, this deponent, could not possibly consider, or look upon him in that light, and advised him on no account whatsoever to refuse any duty, or disobey any orders that might be given him. And this deponent saith, that the said Charles Bourne never made any complaint to this deponent of the said Sir James Wallace having treated him with any insolence or abuse, or in any other manner than ordering
that

that he, the said Charles Bourne, should not walk on the same side the quarter-deck with the said Sir James Wallace. And this deponent saith, that he doth not believe that the said Charles Bourne after such conversation between him and this deponent as aforesaid, any longer considered himself a prisoner, or under any restraint, in consequence of the said order of the said Sir James Wallace; for this deponent saith, that on Sunday the twenty-eighth of April. the said ship the Warrior, between eleven and twelve o'clock at night, discovered a Spanish schooner, which she gave chase to, came up with, and took, and that they soon afterwards, the same night, discovered a man of war, which they took for a French ship, and gave chase to, and that the marines were thereupon ordered to quarters, and that the said Mr. Bourne was then at his quarters, and upon their coming up with the said ship, they discovered her to be his Majesty's ship the Sybil, commanded by Captain Rodney. And this deponent saith, his Majesty's ship the Warrior arrived at Jamaica, on or about the thirtieth of April, and soon afterwards the said Charles Bourne was ordered by Lord Rodney, from on board the Warrior to the command of the marines on board Le Hector, one of the French prizes, taken by Lord Rodney's fleet, in the engagement of the twelfth of April. And this deponent saith, that as he, this deponent, was walking with Sir James Wallace in the street at Port-Royal, in Jamaica, in the dusk of the evening, of the fifteenth of May, one thousand seven hundred and eighty-two, the said Charles Bourne came up to them, and addressing himself to the said Sir James Wallace said, I shall be glad to speak to you, Sir James, to which Sir James Wallace made answer, I have nothing to say to you in private, if you have any thing to say to me, say it before this gentleman, pointing to this deponent, speak that captain Varlo may hear, or words to that effect. And this deponent saith, that the said Charles Bourne thereupon turned away from them, the said Sir James Wallace and this deponent, saying, It's very well; very well; or words to that effect. And this deponent saith, that during the whole time that the said Charles Bourne was on board the said ship the Warrior, under the command of the
said

said Sir James Wallace, this deponent never saw, nor heard, nor doth he believe, that the said Sir James Wallace did ever treat the said Charles Bourne with any insolence or abuse, and that the said Charles Bourne never made any complaint to this deponent, or insinuated to this deponent, that the said Sir James Wallace had even treated him with any kind of insolence or abuse, or made use of any abusive or improper language to him, or treated him ill in any manner whatsoever, except his not having introduced him to the governor of Madeira, which this deponent always informed the said Charles Bourne that he had no right to complain of, as none of the other officers belonging to the said ship had been introduced to the said governor, by the said Sir James Wallace. And this deponent saith, that if the said Charles Bourne had ever made any complaint, or representation to this deponent, of the said Sir James Wallace having treated him, the said Charles Bourne, with any kind of insolence, or abuse, or otherwise in an improper manner, whilst he was on board the said ship, under the command of the said Sir James Wallace, he, this deponent, as the commanding officer of the said Charles Bourne, would have given the said Charles Bourne, all the protection and assistance in the power of this deponent, against any such insult or abuse, as well as in obtaining justice to be done to the said Charles Bourne in respect thereof.

WILLIAM VARLO

*Sworn at my house in
Lincoln's-Inn Fields,
June 7, 1783.*

F. BULLER.

* Not wishing to leave on record in a court of law, a circumstance reflecting disgrace on any person of the corps I have the honor to belong to, I suppressed affidavits that would have invalidated the principal facts sworn to by Major Varlo.

AFFIDAVIT of WILLIAM VARLO, Esq. No. V.

WILLIAM VARLO, of Portsmouth, in the county of Hants, Esq. a major in the Portsmouth division of marines, maketh oath and saith, that he was present in Sir James Wallace's cabin, on board his Majesty's ship the Warrior, in the month of February, one thousand seven hundred and eighty-two, at the time mentioned and alluded to by Augustus Markett, late the third lieutenant of the said ship, in his affidavit made in this cause, on the eighteenth day of this instant, and that there were also present at the same time, the said Sir James Wallace, Mr. Spry, the first lieutenant of the said ship, the said Augustus Markett, and the defendant Charles Bourne, and no other officers or persons belonging to the said ship, according to the best of this deponent's recollection and belief; and this deponent absolutely denies that the said Sir James Wallace then put the following question to the said Charles Bourne, viz. "Why, if you thought yourself aggrieved or affronted, did you not call me out;" or that the said Sir James Wallace, to the best of this deponent's recollection and belief, then made use of any words to any other purport or effect than as is mentioned and set forth in the affidavit already made in this cause, by the deponent, on the seventh day of June instant. And this deponent further saith, that he never saw, nor did the said Charles Bourne ever make any complaint whatsoever to this deponent, as his commanding officer, nor did this deponent ever hear from any other person on board the said ship the Warrior, nor does he know or believe, that the said Charles Bourne, during the voyage of the said ship the Warrior, from England to Jamaica, experienced from the said Sir James Wallace any instances of insult, outrage, and un-officerlike behaviour, or that the said Sir James Wallace, on observing the said Charles Bourne walking on the quarter-deck, did ever go out of his cabin, with his fists clinched in a menacing and provoking manner, or in any other manner, driving the said Charles Bourne from side to side of the said ship.

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And this deponent saith, that if ever the said Sir James Wallace had treated the said Charles Bourne in any such manner, this deponent must have heard of the same, and this deponent should and would have considered the said Charles Bourne immediately under, and intitled to the protection of this deponent, and that it would have been incumbent upon this deponent to have taken notice, and that this deponent would have taken notice of the same, and endeavoured all in his power to have obtained redress for the said Charles Bourne. And this deponent further saith, that all the time of the quarrel between the said Charles Bourne and Mr. Stephenson, and the said Charles Bourne's sending up a message to the said Sir James Wallace, to know if he had ordered the ward-room lights to be put out, and at the respective times that the said Sir James Wallace then sent for the said Charles Bourne, and that the said Charles Bourne then came into his cabin, as mentioned in this deponent's former affidavit, made in this cause as aforesaid, no other person or persons, was or were then sitting with the said Sir James Wallace in his cabin, except this deponent and the said Mr. Spry, and that neither the master nor the surgeon of the said ship, or either of them were then, or ever had been, there that evening, for this deponent saith, that the master of the said ship had lost his leg in the engagement on the twelfth of April, which was not a fortnight before that time, and was then confined to his bed, in a cabin in the gun-room*, and that neither the surgeon of the ship, nor Mr. Stephenson, the second lieutenant, or either of them, had ever been in the said Sir James Wallace's cabin during the whole of that night. And this deponent absolutely denies that the said Charles Bourne then repeated any message from the gentlemen of the ward-room, with their respectful compliments, or that the said Sir James Wallace then desired the said Charles Bourne to get away, or said that he, the said Sir James Wallace, would say nothing to him, the said Charles Bourne, at that time, but that he, the said Sir James Wallace, would take another opportunity that the said Charles Bourne should hear from him, or that the said Charles Bourne then replied to the said Sir James Wallace, that he should be happy in the honour at any

* See this evasion laid open in the note to Ferris's affidavit.

any time, to hear what the said Sir James Wallace had to say, or that the said Sir James Wallace and Charles Bourne, or either of them made use of any words to any other purport or effect, than as mentioned and set forth in this deponent's said former affidavit, already made in this cause. And this deponent saith, that the next day, when the said Charles Bourne sent to this deponent into the ward-room, and told this deponent that the said Sir James Wallace had ordered that the said Charles Bourne should not walk on the same side of the quarter-deck with him, the said Charles Bourne never said, or intimated to this deponent, that he, the said Charles Bourne ever, in any manner remonstrated with, or made any reply to the said Sir James Wallace, on his giving such order, or desired the said Sir James Wallace to confine him in a regular manner, that he might have an opportunity of clearing himself, but only said that he considered himself a prisoner, which this deponent then convinced him he had no reason, and ought not to do. And this deponent saith, that they were not at sea for two or three weeks after that time, for that the same happened on the twenty-fifth of April, one thousand seven hundred and eighty-two, and they arrived at Jamaica, on the thirtieth of the same month, according to the best of this deponent's recollection and belief, as to the time.

WILLIAM VARLO.

Sworn in Court,
June 25, 1783.

By the Court.

AFFIDAVIT of EDMUND EARL of CORK and ORRERY. No. VI.

EDMUND Earl of CORK and ORRERY in the
kingdom of Ireland, and Lord Boyle, Baron of Mar-
ton in the kingdom of Great Britain, maketh oath and
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* See the affidavits of Captains Desborough and Hamilton, which contradict the material facts sworn to by the noble earl, Appendix p. 16.

saith, that he knew and had some acquaintance with the said Charles Bourne before he embarked in the year 1781 as an officer of marines on board his majesty's ship the Warrior, and that some time in the beginning of December last the said Charles Bourne called upon this deponent, who was then in London, and represented to this deponent, that he, the said Charles Bourne, had been very ill treated by Sir James Wallace during the time that he was under his command, on board his Majesty's said ship the Warrior, and that he had repeatedly publicly insulted him, and treated him with the most foul and abusive language, and that he, the said Charles Bourne, was then going to Bath, to demand satisfaction of the said Sir James Wallace for the same; and this deponent then giving credit to what the said Charles Bourne so related to this deponent, expressed much concern for his situation, and told him that this deponent wished that it was then in his, deponent's power, to go to Bath, as this deponent had reason to hope that he might be able to make up the difference between him and the said Sir James Wallace, but that this deponent could not then possibly go with him, and that if he could have gone, he did not mean to go as his second, but as a mediator and friend to both; and this deponent particularly advised and recommended to the said Charles Bourne to conduct himself with coolness and discretion, and get some friend that he could depend upon to go with him. And this deponent saith, that upon the said Charles Bourne's return from Bath to London, he again waited upon this deponent, and informed this deponent that he had sent several messages to the said Sir James Wallace, by one of the waiters belonging to the Whitehart Inn, and had also written to him, but could not obtain an interview with him, and that he had met him in the street, and caned him, or struck him with his cane, and was determined immediately to publish two letters, which he told this deponent he had sent to Sir James Wallace at Bath, and then gave this deponent to read; and this deponent then told the said Charles Bourne that this deponent could by no means approve of the said Charles Bourne's conduct towards the said Sir J. Wallace at Bath, and advised him by no means to pub-
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lish the said letters, or put any thing in the news-papers relating thereto. And this deponent saith, that he some time afterwards, on the same day, called upon Mr. Sleigh, a relation of the said Sir James Wallace, and informed him of what the said Charles Bourne had so told this deponent, and that the said Charles Bourne had declared to this deponent that he would publish the said letters, and that this deponent had advised him by no means to do it.* But this deponent saith, that he did not mean thereby to convey any message from the said Charles Bourne to the said Sir James Wallace, nor ever considered the said Mr. Sleigh as a third person between this deponent and the said Sir James Wallace.* And this deponent saith, that the said Mr. Sleigh then told this deponent, that he did not know that the said Sir James Wallace was then returned from Bath, but was certain that he was not come to his house in London, that he might have stopped at his house at Hanworth, and that he, the said Mr. Sleigh, would go to Hanworth that afternoon to see if he was come thither. And this deponent saith, that about two days afterwards he had a conversation with the said Mr. Sleigh, on the said difference between the said Charles Bourne and Sir James Wallace, when the said Mr. Sleigh told this deponent, that he had seen the said Sir James, who was then in town, and that the conduct and behaviour of the said Charles Bourne, towards the said Sir James Wallace at Bath was widely different from what the said Charles Bourne had before related to this deponent, and that the said Sir James Wallace intended to lay a state of the said Charles Bourne's proceedings before the Lords of the Admiralty. And this deponent then told the said Mr. Sleigh, that if any thing in this deponent's power could effect a reconciliation between the said Charles Bourne and Sir James Wallace it would give this deponent the greatest happiness;

* How are we to account for the officious conduct of this noble lord? If he did not call on Mr. Sleigh, as the friend of Mr. Bourne, for the purpose of delivering a message to Sir James Wallace, for what purpose did he call? Can it be supposed that the Earl of Cork would so far degenerate from the dignity of his station, as to betray the private conversation of a gentleman confiding in his honour, to the attorney of his opponent—Yet if he did not go as a friend, he must have gone as an enemy, for the purpose of furnishing evidence to Sir James Wallace!

ness; and this deponent afterwards expressed himself to the same effect to the said Charles Bourne, and told him what the said Mr. Sleigh had so said to this deponent. And this deponent saith, that his only motive and inducement for interfering in the said business was out of friendship* to the said Charles Bourne, and with a view of preventing him from doing any act that might tend to his disadvantage, and that this deponent never took any other part in the said business than that of a mediator and friend to both parties, in hopes of making up the difference between them in an amicable manner, and which this deponent constantly declared to every person with whom he about that time had conversation about the same. And this deponent saith, that whatever declarations the said Charles Bourne may have made of this deponent's having undertaken any other or different part in the said dispute, he had no cause or authority for so doing, and never made such declaration in the presence of this deponent, and that if any conclusion hath ever been drawn from any conversation that this deponent ever had with the said Charles Bourne, in the presence of any other person or persons, on the subject of the said dispute, that this deponent had undertaken to carry any message from the said Charles Bourne to the said Sir James Wallace, and to go out with him as his second, such conclusion could not be fairly drawn immediately from any thing that this deponent then said, but must have been derived from some antecedent misrepresentation of the matter, by the said Charles Bourne, at a time when this deponent was not present to hear and explain the same. And this deponent saith, that he was afterwards

* Here the noble lord declares that friendship was his motive; that his wish was to promote a reconciliation, that he intended to be a mediator. But does the noble lord evince those motives, wishes, and intentions, when, as appears by the first part of his affidavits, he divulged the whole of the conversation between him and Mr. Bourne to Mr. Sleigh; or rather, indeed, that he communicated a conversation to Mr. Sleigh, great part of which never passed between them. Was it the act of friendship?—Does it look like a wish to reconcile?—Does it shew the intention of a mediator, for a man to urge every circumstance that could irritate?—The illustration is upon the face of the affidavit, Lord Cork is now obliged to swear to the conversation he had with Mr. Sleigh; but compare his lordship's affidavit with the joint affidavits of Captains Desborough and Hamilton, men of the strictest truth, character, probity, and honour.

wards informed that the said Charles Bourne had published a letter in the Morning Herald of the twenty-third of December last, wherein he asserted that a nobleman did him the honor of calling on the said Sir James Wallace to inform him that he, the said Charles Bourne, was in town, and to know his, the said Sir James Wallace's, determination, but could not see him, and that the said Charles Bourne had declared, and that it was publicly reported, that this deponent was the nobleman meant and alluded to by the said letter, and that this deponent had waited upon the said Sir James Wallace with a challenge from the said Charles Bourne, and had offered to go out with the said Charles Bourne, as his second. And this deponent saith, that he was at that time at his house at Marston in the county of Somerset, from whence he returned to London about the eighth day of January last, and that a few days afterwards this deponent had an interview with the said Charles Bourne by this deponent's appointment, in the presence of Captain Cruickshanks, of the thirty-sixth regiment of foot,* to receive an explanation from the said Charles Bourne of the meaning of his said letter and report, when the said Charles Bourne acknowledged to this deponent, that this deponent was the nobleman meant and alluded to by him in the said letter, and that he had reported that this deponent had waited upon the said Sir James Wallace with a challenge from him, and had offered to go out with him as his second, upon which this deponent asked the said Charles Bourne, what he could mean thereby, as he, the said Charles Bourne, well knew that this deponent had never waited or called upon the said Sir James Wallace with any message whatsoever, from him the said Charles Bourne. And this deponent saith, that the said Charles Bourne thereupon

* Captain Cruickshank's is now in the East Indies, which deprives Mr. Bourne of the benefit of his testimony; but see Mr. Bourne's last affidavit, where he positively swears he never made an apology to Lord Cork. It is presumed that Lord Cork must have forgotten that the defendant, on being informed that letters from his lordship to Mr. Sleight, condemning Mr. Bourne's conduct, had been read at the navy, wrote to his lordship, signifying that if any such letters had been read, they must have been forged; for that Lord Cork, who volunteered the honor of his services to defendant, in case Sir James Wallace would have gone into the field, could not possibly have been the author of productions so inconsistent and fallacious.

thereupon made an apology to this deponent for his having made such use of this deponent's name. And this deponent further saith, that he, this deponent, never did undertake to wait or call upon the said Sir James Wallace, with any message, or to carry any message whatsoever to him from the said Charles Bourne, and that this deponent never did, directly or indirectly, wait or call upon the said Sir James Wallace, with any message, or carry any message to him, from the said Charles Bourne; and that this deponent never had any thought or intention of so doing. And this deponent saith, that whenever this deponent hath called upon the said Sir James Wallace, or at his house, which this deponent hath done before and since the dispute now subsisting had arisen between the said Charles Bourne and the said Sir James Wallace, this deponent always did the same as a visit of friendship, between one gentleman and another, and not with any reference whatsoever to any such dispute between the said Charles Bourne and the said Sir James Wallace.

CORK and ORRERY,

Sworn in Lower-street.

The 27th day of June, 1783,

before

J. N. NEWLAND, (*by Commission.*)

AFFIDAVIT of WILLIAM DAVIS, No. VII.

WILLIAM DAVIS, of Priston, in the county of Somerset, Esq. (Agent Victualler of Gibraltar) maketh oath and saith, that on or about the seventh day of December last, according to the best of this deponent's recollection as to the time, as this deponent was coming out of a house at the north end of Milsom-street in Bath, Captain John Webber of the marines, was passing by, and said to this deponent, that if this deponent was going down the street he would see Sir James Wallace get a thrashing, or a beating, to which this deponent replied, that if he, this deponent, knew Sir James Wallace well, he would not suffer himself to be beaten by any man, but
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the said Captain Webber said, well, you will see, and taking hold of this deponent's arm, crossed the street; and after they had walked a very little way down, this deponent saw Sir James Wallace coming up on the opposite side of the street, and said to Captain Webber, there is Sir James Wallace, and Captain Webber said, yes, and there is the other, pointing to a gentleman who was then going up to the said Sir James Wallace, and who the said Captain Webber told this deponent was Mr. Bourne of the marines, meaning the defendant in this cause, as the deponent believes. And this deponent saith, that when the said Charles Bourne was within three or four paces of the said Sir James Wallace, this deponent saw the said Sir James Wallace take a small pistol out of his pocket, which he held in his hand, and the said Charles Bourne had a stick in his hand, and that some words then passed between them, but this deponent was not near enough to hear the purport of their conversation. And this deponent saith, that the said Charles Bourne never struck, or attempted to strike, the said Sir James Wallace with his stick, nor did this deponent observe any blows or threats of blows, from either of them to the other. * And this deponent saith, that he never quitted sight of them from the time this deponent first saw the said Sir James Wallace to the time of the said Charles Bourne's meeting the said Sir James Wallace, and afterwards parted from him, when the said Sir James Wallace walked up the street, and the said Charles Bourne came across the street to the said Captain Webber; and this deponent and the said Charles Bourne said to the said Captain Webber, had I struck him (meaning the said Sir James Wallace) he would have shot me, he had a pistol in his hand, and I should have been imprudent if I had, but I will go home and be prepared, and I will be with him again immediately, or words to that effect. And the said Charles Bourne then left the said Captain Webber and this deponent and walked away.

Sworn at Serjeants Inn,

WILL. DAVIES.

the 20th day of June,

1783, before me,

W. H. ASHURST.

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* See the whole of Captain Webber's affidavit, Appendix, p. 13.

**AFFIDAVIT of ROBERT FARRIS,
No. VIII.**

ROBERT FARRIS, of Ramsgate, in the county of Kent, Gentleman, a Lieutenant* in his majesty's royal navy, maketh oath and saith, that he was an officer belonging to and on board his majesty's ship called the Warrior, under the command of Sir James Wallace, from the time of the said ship's sailing on her voyage to the West Indies, in the beginning of the year 1782, until the time that the said Sir James Wallace quitted the said ship at Jamaica, some time in the beginning of July, 1782, on his being appointed to the command of his majesty's ship the Resolution, and this deponent saith, that the defendant, Charles Bourne, was a Lieutenant of marines, embarked on board the said ship, the Warrior, and on board the said ship at the time that the said ship sailed from Portsmouth, as aforesaid, and that the said Charles Bourne continued on board the said ship as a Lieutenant of marines, until a short time after the engagement of the twelfth of April, 1782, between his majesty's fleet under the command of Lord Rodney, and the French fleet, under the command of the Count de Grasse, when the said Charles Bourne was ordered from the Warrior to go on board the Hector, one of the French ships captured in the said engagement, and this deponent saith, that the several officers of and belonging to the said ship called the Warrior, before, and at the time that the said Charles Bourne embarked on board the said ship, messed and lived together on board the said ship in great friendship and cordiality, and that after the said Charles Bourne had been some little time on board the said ship, he began to create dissensions and form parties among the said officers, and entered into disputes and quarrels with some of the said officers, and did not behave or conduct himself with that good order and discipline which officers
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* Of his own creating, for the supposed purpose of giving weight to his affidavit.

on board his majesty's ships are accustomed to;* and this deponent saith, that the said ship the Warrior on her voyage to the West Indies touched at the island of Madeira, and that whilst she lay off the said island the said Sir James Wallace gave leave to the officers belonging to the said ship to go ashore in the day time, but ordered them to return to and keep on board the said ship every night, as the combined fleets of France and Spain were then at sea, and there was a possibility of some of the cruising ships belonging to that fleet coming in upon them there in the night; and this deponent saith, that the said Charles Bourne went ashore with several other officers belonging to the said ship, but that the said Charles Bourne did not return to the ship with the other officers, but continued ashore there two whole nights, contrary to the orders of the said Sir James Wallace, and behaved in a very disorderly manner whilst he was so on shore;* and that after his return to the ship he wrote and sent a note or letter to the said Sir James Wallace, thanking him for his polite introduction of the said Charles Bourne to the Governor of Madeira, and insinuating that he was indebted to the said Sir James Wallace for the civilities he had received, and the polite treatment he had experienced from the inhabitants there while he was on shore, alluding, as this deponent believes, to his, the said Charles Bourne's having been turned, or obliged to go out of the theatre, for his improper behaviour there, as this deponent hath heard and believed; and this deponent further saith, that the said Charles Bourne afterwards, between ten and eleven o'clock, in the night of the 24th or 25th of April, according to the best of this deponent's recollection and belief, as to the time whilst the said ship the Warrior was on her voyage to Jamaica, quarrelled very much with Mr. Stephenson the second Lieutenant of the said ship, and who, as this deponent believes, is now on board the said ship in the West Indies, and which quar-

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* Mr. Farris speaks with an extraordinary degree of confidence of what he must be little better than a stranger to, his situation in the Orlop precluding him from almost every means of forming an opinion on the conduct of gentlemen in the ward-room.

* See the affidavits of Lieutenant Markett, Monk, &c.

rel was began and occasioned by the said Charles Bourne's making a very great noise in the ward-room, which prevented the said Mr. Stephenson, who was then in bed, and was to turn out to keep the middle watch, from sleeping; and this deponent saith, that the said Mr. Stephenson several times desired the said Charles Bourne not to make so great a noise, for that it was impossible for him to sleep, but that the said Charles Bourne, disregarding such requests, continued to make the same or a greater noise, and that the said Mr. Stephenson, who was then the chief officer in the ward-room, ordered the ward-room lights to be put out, which was no sooner done than the said Charles Bourne began to make use of very gross and abusive language to the said Mr. Stephenson, and the said quarrel was carried so far as to produce a challenge between them, and that the said Charles Bourne, during such quarrel, ordered one of the servants in the ward-room to go up to the Captain, meaning the said Sir James Wallace, and ask him if he had ordered the ward-room lights to be put out, though the said Charles Bourne then very well knew that the said lights had been put out by the order of the said Mr. Stephenson; and this deponent, saith that soon after the said Charles Bourne had sent up such message to the said Sir James Wallace, Mr. Thomas Spry, the first Lieutenant of the Warrior, and who is now on board his majesty's ship the Barfleur in the West Indies, as this deponent believes, came down into the ward-room, and enquired into the cause of the noise and disturbance which was made there, and what the said Charles Bourne meant by the message which he had sent up to Sir James Wallace, about the putting out the ward-room lights, when the said Mr. Stephenson informed the said Mr. Spry of all that had happened between him, the said Mr. Stephenson and the said Charles Bourne, and that the said Charles Bourne knew when he sent up the said message to the said Sir J. Wallace, that he, the said Mr. Stephenson, had ordered the ward-room lights to be put out; and this deponent further saith, that soon after the said Mr. Spry had left the ward-room, one of the Captain's servants came down with a message for Mr. Bourne to go up into the Captain's cabin, which he accordingly did, and soon afterwards

terwards returned again into the ward-room, when he kept walking up and down for some time, muttering and talking to himself. And this deponent further saith, that the next day, whilst this deponent was walking on the quarter-deck, near the said Sir James Wallace, the said Charles Bourne came upon the same side of the quarter-deck, and in a swaggering way brushed past the said Sir James Wallace, and stared in his face in a very daring and insulting manner, upon which Sir James Wallace called to Mr. Spry, the first Lieutenant, who was then walking on the opposite side of the deck, and said to him, Mr. Spry, My orders are that Mr. Bourne does not walk with me, or to that effect, and which were all, or the only words, according to the best of this deponent's recollection and belief, that were then spoken by the said Sir James Wallace to the said Charles Bourne, and that the said Charles Bourne thereupon quitted the quarter-deck, and went down into the ward-room, as this deponent verily believes, and this deponent positively saith, that he doth not know or believe that the said Sir James Wallace ever treated the said Charles Bourne with any insolence or abuse during the whole time that he was under his command on board the said ship the Warrior.

*Sworn in Court, 2d
June 1783.*

ROBERT FARRIS.

By the Court.

**AFFIDAVIT of RALPH DUNDAS,
Esq. No. IX.**

RALPH DUNDAS, of Arundel-street in the Strand, in the county of Middlesex, Esquire, a Captain in his majesty's navy, maketh oath and saith, that some time about the latter end of December last, this deponent having heard it reported in several places, and that it was become the subject of conversation in most of the Coffee Houses in London, that the Right Honourable the Earl of Cork conveyed a challenge from the above-named defendant Charles Bourne to Sir James Wallace, and that the

the said Earl of Cork was to have gone out with him, the said Charles Bourne, as his second, and that Sir James Wallace had declined meeting him. And this deponent saith, that as he had very good reasons to believe that the said Earl of Cork had never waited upon the said Sir James Wallace with any message from the said Charles Bourne, and well knew that if he had so done that the said Sir James Wallace would not have declined meeting the said Charles Bourne, this deponent thought it necessary that the said Sir James Wallace should be immediately informed of so false, scandalous, and injurious a report; and that on the forenoon of the twentieth day of December last, this deponent, in his way to the said Sir James Wallace, to inform him of the said report, met the said Sir James Wallace in his carriage in the Strand, going into the city, when this deponent stopt the carriage, and informed the said Sir James Wallace of the above report, who thereupon desired this deponent to get into his, the said Sir James Wallace's carriage, and accompany him to the said Earl of Cork. And this deponent accordingly got into the said carriage, which the said Sir James Wallace ordered to drive immediately to his own house, in Pall-Mall, where they stopt; and the said Sir James Wallace then drove with this deponent immediately to Lord Cork's in Lower Grosvenor-street. And this deponent saith, that on their inquiry for the said Earl of Cork at his house in Lower Grosvenor-street, they were informed by the servant there that his lordship had that morning set out for his house at Marston in Somersetshire. And this deponent saith, that upon his endeavouring to find out the author of the said report, this deponent was informed that James Maden, Esq. Clerk in the marines department of the Admiralty, had declared the same, upon which this deponent in company with Mr. William Sleigh of Whitehall, went on the twenty-first of December last to the said Mr. Maden's house in New-Bond-street, to know from the said Mr. Maden his authority for having propagated such a report; when the said Mr. Maden informed this deponent and the said Mr. Sleigh, that he, the said Mr. Maden, would be very candid

candid and explicit with them, and said that the defendant, Charles Bourne, himself, had declared to him, the said James Maden, that he the said Charles Bourne had challenged the said Sir James Wallace at Bath, but that he would not meet him, and that he had afterwards met the said Sir James Wallace in the street there, and struck him on the hat with his cane, and that on his the said Charles Bourne's return to London, Lord Cork had waited upon the said William Sleigh with a challenge or message from the said Charles Bourne to the said Sir James Wallace, and was to have gone out with the said Charles Bourne, as his second, or words to that effect; which declaration of the said Charles Bourne, the said William Sleigh then told the said James Maden, was a most infamous falsehood, and that the said Earl of Cork had never waited upon him the said William Sleigh with any message from the said Charles Bourne to the said Sir James Wallace. And this deponent saith, that he hath been informed and believes, that the said William Sleigh, by that night's post, by letter, informed the said Earl of Cork, of the said declaration and report, and that some letters passed between the said Earl of Cork and the said William Sleigh, disavowing and denying the truth of the said report, so far as the same related or alluded to him the said Earl of Cork, and declared that he had never undertaken to carry any message from the said Charles Bourne to the said Sir James Wallace, either directly or indirectly, copies of which letters the said Sir James Wallace afterwards delivered to this deponent. And this deponent saith, that in the course of a conversation between the said Charles Bourne and this deponent, in the month of January last, upon the subject of the said dispute between the said Sir James Wallace and the said Charles Bourne, this deponent, at the request of the said Charles Bourne, gave the copies of the said letters to him, who perused and afterwards returned the same to this deponent; and the said Charles Bourne then told this deponent that he knew the said Sir James Wallace to be a man of courage and resolution, for that he had seen him in two actions, and did not apprehend that the said Sir
James

James Wallace was afraid of him the said Charles Bourne*.

Sworn in Court, 28th June, 1783. RALPH DUNDAS,

June, 1783.

By the Court.

AFFIDAVIT of BENJAMIN MAITLAND, No. X.

BENJAMIN MAITLAND, Master's Mate, of and belonging to his Majesty's ship the Warrior, maketh oath and faith, that he was an officer on board the said ship at the time that she sailed from Portsmouth to the West-Indies, under the command of Sir James Wallace in January 1782, and hath ever since been, and now is, an officer belonging to the said ship. And this deponent saith, that the defendant Charles Bourne was the first lieutenant of marines, embarked on board the said ship at the time of her sailing from Portsmouth as aforesaid, and that he continued on board the said ship until after her arrival at Jamaica, when he was ordered from on board the Warrior to the Hecfor, one of the French prizes taken on the 12th of April 1782. And this deponent saith, that during the whole voyage of the said ship the Warrior from England to Jamaica, and during all the time that the said Charles Bourne continued on board, or belonged to the said ship, this deponent never saw,

* Does this correspond with the expressions contained in the letters written by Mr. Bourne to Sir James Wallace, stated in the information for the libel, and is it consistent with common sense to suppose, that Mr. Bourne having stigmatized Sir James Wallace, under his hand, in those letters, as a coward, would in a conversation subsequent to that fact, and after Sir James Wallace refused to fight him, declare to a friend of Sir James Wallace that he *knew* him to be a man of courage and resolution? Had Mr. Bourne entertained a good opinion of the prosecutor previous to his refusing him the satisfaction of a gentleman, that refusal would have been sufficient to induce a firm belief that he merited the epithets applied to him. This is not the first lapse of memory Captain Dundas has evinced respecting Mr. Bourne, when Mr. Bourne applied to him, in consequence of some exceptionable expressions which he had dropped relative to him, perhaps in the unguarded moments of ebriety, he solemnly declared that in future he should never speak of Mr. Bourne but with the highest respect, and yet in a few evenings after he repeated his unwarrantable transgression.

saw, nor did he ever hear, nor doth he know or believe, that the said Sir James Wallace ever treated the said Charles Bourne ill in any respect whatsoever, or ever made use of any abusive, insulting, or improper language to the said Charles Bourne, or that the said Charles Bourne ever experienced from the said Sir James Wallace any instances of insult, outrage, and an un-officer like behaviour, or that the said Sir James Wallace ever, on observing the said Charles Bourne on the quarter-deck, came out of his cabin with his fists clenched, in a menacing and provoking manner, driving the said Charles Bourne from side to side of the ship. And this deponent saith, that he verily * believes that if any such thing had ever happened on board the said ship, this deponent should either have seen or heard of the same. And this deponent saith, that on the 24th of April, according to the best of this deponent's recollection and belief as to the time, and which this deponent believes was the day after the said Charles Bourne had a quarrel with Mr. Stephenson, the second lieutenant of the said ship, for ordering the ward-room lights to be put out, this deponent was upon the quarter-deck within a few paces of the said Sir James Wallace, who was then walking on the quarter-deck, and that whilst the said Sir James Wallace was walking there, the defendant Charles Bourne came upon the same side of the quarter-deck, and walked up to and passed the said Sir James Wallace, called to Mr. Spry, the first lieutenant of the said ship, who was then on the opposite side of the deck, and told the said Mr. Spry, that his the said Sir James Wallace's orders were, that Mr. Bourne should not walk with him, or words to that purport or effect, according to the best of this deponent's recollection and belief, upon which the said Charles Bourne turned round and made some short reply to the said Sir James Wallace, and then quitted the quarter-deck, but this deponent positively saith, that the said Sir James Wallace did not come running out of his cabin at the time that the said Charles Bourne

* This gentleman has the most extensive faith:—a fortunate possession for some young men, as they mould it to what form they please, making it happily subservient to their interests.

Bourne so came upon the quarter-deck, in a * violent manner with his fists clenched to the said Charles Bourne's face, for that the said Sir James Wallace had been walking on the quarter-deck for some time before, and was walking there when the said Charles Bourne came upon the quarter-deck. And this deponent positively saith, that the said Sir James Wallace did not then, or at any other time that this deponent ever saw, or heard, clench his fist to the face of the said Charles Bourne in any manner whatsoever. And this deponent saith, that on or about the 30th of April, being about six days after the said ship the Warrior arrived at Jamaica, and the said Charles Bourne was soon afterwards ordered by Lord Rodney from the Warrior on board the Hector.

*Sworn at my Chambers
in Serjeants Inn, 21st
day of June, 1783,*

BENJ. MAITLAND.

Before F. BULLER.

AFFIDAVIT of JAMES MADEN, Esq; No. XI.

JAMES MADEN, of Newport-street, in the Parish of Saint Martin, in the Fields, in the County of Middlesex, First Clerk in the Marine Department of the Admiralty, maketh oath and saith, that he hath some time known and been intimately acquainted with the defendant Charles Bourne, and that in a conversation which the said Charles Bourne had with this deponent some time in the month of December last, relating to a difference between the said Charles Bourne and Sir James Wallace, the said Charles Bourne told this deponent, that he, the said Charles Bourne, had been at Bath to demand satisfaction of the said Sir James Wallace upon the subject of the said difference, and that he had sent several messages to him, but that the said Sir James Wallace declined to meet him the said Charles Bourne, and that he the said Charles Bourne had afterwards

* See the depositions of Lieutenant Monke and the defendant; who positively swear that Sir James Wallace was guilty of this violence.

wards met the said Sir James Wallace in the street at Bath, and had struck the said Sir James Wallace with his the said Charles Bourne's cane, and that on the said Charles Bourne's return to London, Lord Cork had waited on Mr. Sleigh (a relation of the said Sir James Wallace) with a message from the said Charles Bourne to the said Sir James Wallace, and that the said Lord Cork was to have gone out with him the said Charles Bourne as his second, but that the said Sir James Wallace would not meet the said Charles Bourne. And this deponent saith, that the same being at that time matter of public conversation, and the said Charles Bourne having, as this deponent believes, told the same to several other persons as well as this deponent, he this deponent did not consider such declaration of the said Charles Bourne to this deponent as a secret, and therefore reported the same again to several other persons, as it had been so related by the said Charles Bourne to this deponent. And this deponent saith, that in consequence of his having so reported the same, this deponent, on or about the 21st day of December last, according to the best of this deponent's recollection as to the time, was called upon at his house in Newport-street, by Captain Ralph Dundas of the navy, and the said Mr. Sleigh, who desired to know from this deponent relating to the said business, when this deponent told them he would be very explicit with them, for that the defendant Charles Bourne had declared to this deponent what this deponent hath heretofore mentioned, or words to that effect, upon which the said Mr. Sleigh told this deponent it was a most infamous falsehood, or words to that effect. And this deponent saith, that he was afterwards called upon at the Admiralty by the Right Honourable the Earl of Cork and the said Mr. Sleigh, in company with another gentleman, who appeared to this deponent to be an officer, when the said Earl of Cork questioned this deponent touching the said Charles Bourne's having declared to this deponent, that he the said Earl of Cork had waited upon the said Mr. Sleigh, or the said Sir James Wallace, with a message from the said Charles Bourne, and that the said Earl of Cork was to have gone out with the said Charles Bourne as his second, and upon this

this deponent's admitting that the said Charles Bourne had made such a declaration to this deponent, the said Earl of Cork told this deponent, that the same was not true, and that he the said Earl of Cork had never, directly or indirectly, done any such thing, which surprised this deponent very much. And this deponent saith, that he afterwards told the said Charles Bourne, that what he had so declared to this deponent, had been contradicted both by the Earl of Cork and the said Mr. Sleigh, and that it had been said, that the said Charles Bourne had never struck the said Sir James Wallace at Bath, and that this deponent apprehended the same might be a very serious business to him the said Charles Bourne, upon which the said Charles Bourne told this deponent, that he the said Charles Bourne did not know what was meant by his not having struck the said Sir James Wallace, for that he the said Charles Bourne had shaken his cane over the said Sir James Wallace, and struck him on the hat.

*Sworn at my house in Lin-
coln's-Inn-Fields, June
21, 1783, before me,*

JAS. MADEN.

F. BULLER.

AFFIDAVIT of JAMES MENDENALL, No. XII.

* JAMES MENDENALL, of the city of Bath, in the county of Somerset, Yeoman, maketh oath, and saith, that he, this deponent, in the month of December last, was, and still is, a waiter at the White Hart Inn, in the said city of Bath, and that in the evening of the 5th day of December last, a gentleman, who was then unknown to this deponent, but whose name, as this deponent was the next day informed by him, and believes,

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* Mr. Bourne shall not make any other note on this man's deposition, but that he is a waiter at an inn at Bath, and Sir James Wallace had him up to London for the purpose of obliging him with this affidavit, little doubt remaining of his being perfectly satisfied for it, and his *expences* being *amply* borne.

is Bourne, and who as this deponent also believes is a Lieutenant of marines, and the defendant in this cause, came to the White-Hart-Inn, aforesaid, in one of the London coaches, as this deponent believes, and that he spent that evening in the public coffee-room of the said inn. And this deponent saith, that between ten and eleven o'clock the next morning, the said Mr. Bourne stopt this deponent in the lobby of the said inn, and said to this deponent, " You seem to be an intelligent man, and a fit person for a very particular business in which I want to employ you." And he thereupon took this deponent into a parlour adjoining to the coffee-room; and there asked this deponent if he, this deponent, knew where Sir James Wallace lodged, to which this deponent answered, that he did not; and the said Charles Bourne then told this deponent, that the said Sir James Wallace lodged at a Mr. Plura's in Melfom-street, and desired this deponent to go to him there, and tell him that a gentleman at the White-hart wished to speak to him, the said Sir James Wallace; and this deponent saith, that he, the said Charles Bourne, particularly desired that this deponent would not deliver the said message to any servant of the said Sir James Wallace, but that he would see the said Sir James Wallace, and deliver it to himself.

And this deponent saith, that he accordingly went immediately to the said Sir James Wallace's lodgings in Melfom-street, aforesaid, and delivered the said message to him whilst he was in the dining-room there with Lady Wallace, as this deponent believes. And this deponent saith, that the said Sir James Wallace then asked this deponent the name of the gentleman, what sort of a person he was, and whether he looked like an officer, and this deponent informed the said Sir James Wallace that he did not know the gentleman's name, nor who he was, but told the said Sir James Wallace that he had a foreign servant with him, as this deponent believes. And this deponent saith, that he doth not recollect that the said Sir James Wallace then returned any direct answer to the said message of the said Charles Bourne, whether he would or would not go to the White-hart Inn; but this deponent saith, that he, this deponent, returned to the said Charles Bourne, and informed him that he had

had delivered his said message to the said Sir James Wallace, upon which he, the said Charles Bourne, seemed very much confused, and desired this deponent to shew him into a private room, and this deponent accordingly conducted him into a room up one pair of stairs in the said inn, adjoining to the room where the said Charles Bourne had slept the preceding night, and where this deponent left him alone. And this deponent saith, that the said Charles Bourne desired this deponent to shew the said Sir James Wallace into the same room as soon as he came to the said inn. And this deponent also saith, that verysoon afterwards a man who as this deponent believes, was a servant to Captain Webber, who was then at Bath, brought a sword to the White-Hart-Inn, and delivered the same to this deponent, and desired this deponent to take the said sword into Mr. Bourne's room. And this deponent saith, that he accordingly carried and left the said sword in the said Mr. Bourne's bed-room, adjoining to the room where the said Mr. Bourne was then waiting for the said Sir James Wallace. And this deponent further saith, that after the said Charles Bourne had waited about half an hour in the said room, in expectation that the said Sir James Wallace would come to him, the said Charles Bourne looked over the bannisters of the stair-case, and desired this deponent, who was then in the lobby, to go up to him, and this deponent accordingly went up and followed the said Charles Bourne into the room. And this deponent saith, that the sword which a little before had been delivered to this deponent, by the said Captain Webber's servant, and left by this deponent in the said Charles Bourne's bed-room, was then lying upon one of the side-tables in the room where the said Charles Bourne then was, and the said Charles Bourne then appeared to this deponent to be very much agitated, and desired this deponent to go again to the said Sir James Wallace to know whether he would come or not; and this deponent saith, that he accordingly went again to the said Sir James Wallace's lodgings, and delivered the said message to the said Sir James Wallace, who again asked this deponent the gentleman's name, which this deponent told Sir James Wallace the gentleman would not send, but desired to know whether he,

the

the said Sir James Wallace, would come or not, upon which the said Sir James Wallace, said that he certainly should not go to any gentleman whose name he did not know, or who would not send his name, or to that effect, according to the best of this deponent's remembrance and belief, and which answer this deponent delivered to the said Charles Bourne, who immediately with very great warmth, told this deponent to go back, and tell the said Sir James Wallace that his name was Bourne. And this deponent saith, that he accordingly went back again to the said Sir James Wallace, and told him that the gentleman's name was Bourne, upon which the said Sir James Wallace said, that he had no business with that gentleman; which answer this deponent carried back and delivered to the said Charles Bourne, who said, "no business with me has he," and immediately went out of the house in a very great rage and passion. And this deponent saith, that the said Charles Bourne soon afterwards returned again to the said inn, and wrote a letter to the said Sir James Wallace, which he desired this deponent to take to the said Sir James Wallace's lodgings; and this deponent asked the said Charles Bourne if he this deponent, was to wait for an answer to the said letter, when the said Charles Bourne informed this deponent that the said letter did not require any answer; and this deponent thereupon carried the said letter, and delivered it to one of the servants at the said Sir James Wallace's lodgings; and this deponent saith, that he doth not remember that he ever saw any person in his life more agitated, than the said Charles Bourne appeared to be at the several times that he desired this deponent to carry such messages as aforesaid to the said Sir James Wallace, and at the time that this deponent returned to him again with the said Sir James Wallace's answers. And this deponent saith, that the said Charles Bourne never intimated to this deponent the business upon which he wanted the said Sir James Wallace, but upon this deponent's reflecting upon the whole of the said Charles Bourne's behaviour, and the danger that the said Sir James Wallace would have been in if he had gone to the said Charles Bourne, as the said Charles Bourne had a brace of pistols with him there as well as the sword, which had been

been so brought for him by the said Captain Webber's servant, as aforesaid; this deponent was very much concerned that he had not intimated to the said Sir James Wallace his, this deponent's suspicions of the said Charles Bourne's intentions against the said Sir James Wallace; and cautioned him against going to the said Charles Bourne. And this deponent apprehends, and verily believes, that some fatal consequences would have ensued if the said Sir James Wallace had gone to the said Charles Bourne upon any of the said messages which were so carried to him by this deponent from the said Charles Bourne, as aforesaid. And this deponent saith, that he, the said Charles Bourne, went away from the said inn about four o'clock in the morning of the ninth of December, in one of the London coaches, as this deponent believes, and that between the time of this deponent's carrying the aforesaid letter from the said Charles Bourne to the said Sir James Wallace, and the said Charles Bourne's leaving the White-Hart Inn, as aforesaid, the said Bourne at different times frequently and publicly, both in the coffee-room and other parts of the said inn spoke many very disrespectful words of the said Sir James Wallace to different persons that came into, or were in the said inn, reflecting very much on the character and courage of the said Sir James Wallace, and intending to prejudice the minds of such persons against the said Sir James Wallace.

JAMES MENDENALL.

Sworn at Westminster-hall,

3d June, 1783.

F. BULLER.

**AFFIDAVITS of JAMES WALLIS
and JOSEPH MOORE. No. XII.**

JAMES WALLIS, of Deptford, in the county of Kent, Shipwright, late carpenter of his majesty's ship the Warrior, and now carpenter of his majesty's ship the Orion, and **JOSEPH MOORE**, of New-Court, Coleman-street

man-street, London, mariner, late acting schoolmaster on board his majesty's ship the Warrior, under the command of the above-named Sir James Wallace, jointly and severally make oath and say, that this deponent, James Wallis, was the carpenter of the said ship, the Warrior, and that this deponent, Joseph Moore, was the acting schoolmaster on board the said ship, the Warrior, at the time that she sailed from Portsmouth on her voyage to the West Indies, in the month of January, 1782, and that they and each of them continued in such their respective stations on board the said ship, until the month of July following, when this deponent, James Wallis, removed from the said ship, then at Jamaica, as an invalid to return to Europe, and this deponent, Joseph Moore, was removed to his majesty's ship the Resolution upon the said Sir James Wallace being appointed to the command of that ship; and both these deponents say, that the defendant Charles Bourne was the first Lieutenant of marines on board the said ship the Warrior, at the time that she sailed from Portsmouth, and that he continued on board the said ship until after the engagement of the 12th of April, 1782, between the English and French fleets, when he was ordered by Lord Rodney, at Jamaica, on board the Hector, one of the French ships taken in that engagement. And these deponents say that whilst his majesty's ship the Warrior was laying in the Road of Madeira in her voyage to the West Indies, the said Sir James Wallace gave orders that no officer belonging to the said ship should be absent from the said ship during the night, but gave them leave to go on shore every day.

And both these deponents say, that the defendant, Charles Bourne, went on shore one morning, and did not return to the ship for two nights. And this deponent, Joseph Moore, for himself severally saith, that the said Charles Bourne got into several quarrels with the inhabitants there, and was ill treated by them, as this deponent hath been informed and believes. And both these deponents say, that after the said Charles Bourne returned on board the said ship, the Warrior, he complained of the ill-treatment that he had received from the inhabitants whilst he was on shore, and attributed the same to the said Sir James

James Wallace, for his not having introduced him as a British officer, to the Governor of Madeira. And this deponent, Joseph Moore, for himself severally saith, that one day, on the said ship's passage to Jamaica, as the said Sir James Wallace was walking on the larboard side of the quarter-deck, this deponent, who was then on the larboard side of the quarter-deck, saw the said Charles Bourne walk up to the said Sir James Wallace in a very jesting and insulting manner, threw his arms about, and looking the said Sir James Wallace in the face as he passed him, and that the said Charles Bourne afterwards returned back in the same manner; and that the said Sir James Wallace, in order, as appears to this deponent, to avoid being jostled or moved, by the said Charles Bourne, stepped aside on the midship grating, to let the said Charles Bourne pass him. And this deponent saith, that the said Sir James Wallace did not then come running out of his cabin, in a violent manner, with his fists clenched to the said Charles Bourne's face, nor did the said Sir James Wallace then make use of any abusive or ill language to the said Charles Bourne, or treat him with any kind of menacing or rudeness whatsoever. And both these deponents say, that they never saw nor heard, nor do they know or believe, that the said Sir James Wallace ever treated the said Charles Bourne ill, in any respect whatsoever, during any of the time that he was on board his Majesty's said ship the Warrior, and under the command of the said Sir James Wallace, or that the said Charles Bourne, during the voyage of the Warrior from England to Jamaica, experienced from Sir James Wallace any instances of insult, outrage, and un-officerlike behaviour; or that the said Sir James Wallace frequently, or ever, when he saw the said Charles Bourne upon the quarter-deck, did go out of his cabin with his fists clenched in a menacing and provoking manner, driving the said Charles Bourne from side to side of the said ship. And both these deponents say, that if the said Sir James Wallace had ever treated the said Charles Bourne, whilst he was on board the said ship, the Warrior, and under the command of the said Sir James Wallace in any abusive, insulting, menacing, or un-officerlike manner, these deponents must either have seen or heard of the same, or
some

some part thereof, which these deponents, or either of them never did. And both these deponents say, that they have frequently heard the said Charles Bourne, whilst he was on board the said ship, speak many disrespectful words of the said Sir James Wallace to different persons belonging to the said Sir James Wallace, and tending to prejudice the minds of the officers and other persons belonging to the said ship against the said Sir James Wallace. And both these deponents say, that during the time that the said Charles Bourne was on board the said ship, the Warrior, he had frequent disputes and quarrels with many of the officers belonging to the said ship, and as these deponents verily believe, prevailed upon Mr. Markett, the third lieutenant, and Mr. Monke, the fourth lieutenant of the said ship, to join him, the said Charles Bourne, in opposition to the rest of the officers of the said ship. And this deponent, Joseph Moore, for himself severally saith, that soon after the arrival of the said ship, the Warrior, at Jamaica, and before the said Charles Bourne was ordered by Lord Rodney from on board the said ship to the Hector, this deponent, on going one day into the ward-room, to speak to Mr. Monke, the fourth lieutenant of the Warrior, discovered the defendant, Charles Bourne, and the said Mr. Markett, and George Paris Monke, in close conference together, upon a paper writing, which the said Charles Bourne was reading to the said Mr. Markett and Mr. Monke, who were making their remarks upon the same, and which, from so much as this deponent then heard thereof, contained reflections upon the said Sir James Wallace, and his conduct on board the said ship. And both these deponents further say, that during the whole time that the said Charles Bourne continued on board the said ship, the Warrior, he was very much elated with pride, greatly dissatisfied with all the officers of the ship, except the said Mr. Markett and George Paris Monke, impatient of contradiction, and abounding in malice and resentment, and that he did not behave, in any other respects, with that good order and discipline, which is observed by officers on board his Majesty's ships of war. And these deponents verily believe, that if the said Sir James Wallace had brought the said Charles Bourne to a court martial,

martial, for his improper conduct either at St. Lucia, or Jamaica, that the said Charles Bourne would have been broke for the same.

JAMES WALLIS.
JOSEPH MOORE.

*Both sworn at my chambers
in Serjeant's-Inn,
June 21, 1783.
Before me,*

F. BULLER.

**AFFIDAVIT of ROBERT FARRIS,
No. XIII.**

ROBERT FARRIS, of Ramsgate, in the county of Kent, gentleman, a lieutenant in his Majesty's navy, maketh oath and saith, that for some time before, and at the time of the quarrel between the defendant, Charles Bourne, and Mr. Stephenson, the second lieutenant of his Majesty's ship, the Warrior, and before the ward-room lights were put out, as mentioned in the affidavit made by this deponent, in this case, on the second day of June instant, the said Mr. Stephenson was in his bed, in the ward-room, and that he had supped that evening before he went to bed with the mess, in the ward-room, and was not intoxicated with liquor, as this deponent verily believes*. For this deponent saith, that the said Mr. Stephenson is a very sober, quiet man, and this deponent doth not remember or believe, that he then, or at any other time, behaved with great rudeness and impropriety to any of the officers belonging to the said ship, or had then any quarrel with any other person except the said Charles Bourne, and that the said quarrel was begun and occasioned by the said Charles Bourne only, after the said Mr. Stephenson was in bed, that the message thereupon sent to the said Sir James Wallace, was so sent by the said Charles Bourne alone, and in his own name,

* See the joint affidavits of Lieutenant Monke, Markett, Nicholson, Modge, and Mr. Richards, in the Appendix.

name and not by the gentlemen of the ward-room, who were not at all concerned in any manner, in the said quarrel, nor did they send their respectful compliments to the said Sir James Wallace, and request him to order the said candles to be lighted again. And this deponent saith, that it was impossible that the master of the said ship could be in the said Sir James Wallace's cabin, at the time he then sent for the said Charles Bourne into his cabin, for that the master of the said ship had lost his leg, in the engagement of the 12th day of the said month of April, and was then confined to his bed, in a cabin in the gun-room*. And this deponent doth not believe that the surgeon of the said ship was then in the said Sir James Wallace's cabin, as he was at that time ill, and in his own cabin, as this deponent verily believes. And this deponent saith, that he never heard, nor doth he know or believe, that the next morning that the said Mr. Stephenson requested the gentlemen of the ward-room to attend, while he declared his concern for his behaviour to the said Charles Bourne, or that he declared that he was drunk, which this deponent does not believe, and that he was sorry for what had happened, and intreated the said Charles Bourne's pardon and forgiveness, and which this deponent says he must have heard, if any such thing had ever happened. And this deponent saith, that he was upon the larboard side of the quarter-deck, near the grating, on the next day, at the time that the said Sir James Wallace gave orders to Mr. Spry, that the said Charles Bourne should not walk with him, and that this deponent was then within a few paces of the said Sir James Wallace. And this deponent saith, that the said Sir James Wallace had been walking there some time, and that the said Charles Bourne had been walking on the opposite of the quarter-

* Mr. Stone, the master of the Warrior, having lost his leg in the action of the 12th of April, and being by that circumstance unable to do his duty, Sir James Wallace appointed the above Ferris, at that time one of the mates, to fill his station in the ship, he was therefore looked on, and treated by every one, as master; and is the person alluded to by Mr. Bourne, as being present at a conversation in Sir James Wallace's cabin, on or about the 24th of the same month, though Mr. Ferris, by sinking the circumstance of his appointment, and strangely pretending to believe what could not possibly happen, that the poor wounded man, whose situation was universally known, and as universally lamented, was the person sworn to, endeavours to invalidate the affidavit of Mr. Bourne.

quarter-deck, with Mr. Monke, the fourth lieutenant of the said ship, and crossed over from him to the lieutenant's side of the quarter-deck, with an intention, as appeared to this deponent, from his behaviour, to offer some insult to the said Sir James Wallace; and this deponent absolutely denies, that the said Sir James Wallace then came running out of his cabin in a violent manner, with his fists clenched to the said Charles Bourne's face, muttering the word scoundrel, for this deponent saith, that he was then so near to the said Sir James Wallace, that if he had muttered or spoken any such word, this deponent must have heard the same. And this deponent saith, that they were not at sea for two or three weeks after that time, for that they arrived at Jamaica on the 30th of April, which was about six days afterwards. And this deponent saith, that during the whole voyage of the said ship, the *Warrior*, from England to Jamaica, and during all the time that the said Charles Bourne continued on board, or belonged to the said ship, this deponent never saw, nor did he ever hear, nor doth he know or believe, that the said Sir James Wallace ever treated the said Charles Bourne ill, in any respect whatsoever, or ever made use of any abusive, insulting or improper language to the said Charles Bourne, or that the said Charles Bourne ever experienced from the said Sir James Wallace any instances of insult, outrage, and an officerlike behaviour, or, that the said Sir James Wallace ever, on observing the said Charles Bourne on the quarter-deck, came out of his cabin, with his fists clenched in a menacing and provoking manner, driving the said Charles Bourne from side to side of the said ship. And this deponent saith, that he verily believes, that if any such thing had ever happened on board the said ship, this deponent should either have seen or heard of the same.

ROBERT FARRIS.

*Sworn at Westminster-hall,
June 24, 1783.*

E. BULLER.

AFFIDAVIT

AFFIDAVIT of PETER DUPUY
 ABBOT. No. XIV.

PETER DUPUY ABBOT, of New North-street, near Red-lion-square, in the county of Middlesex, gentleman, a lieutenant in his Majesty's royal navy, maketh oath, and saith, that he, this deponent, was the first lieutenant of and on board his Majesty's ship of war the Resolution, and that in or about the beginning of the month of July, 1782, Sir James Wallace, who then commanded his Majesty's ship the Warrior, was appointed to the command of the Resolution, both which ships were then laying off Port-royal, in Jamaica. And this deponent saith, that his Majesty's said ship the Resolution, afterwards sailed from Port-royal for England, on or about the 22d day of July, 1782, and arrived at Portsmouth on or about the 26th day of September following, under the command of the said Sir James Wallace. And this deponent saith, that he afterwards went to Bath, where he was in the beginning of December last, and that in the evening of Friday, the 6th day of December last, according to the best of this deponent's recollection as to the time, whilst this deponent was in the lower rooms at Bath, he was accosted by the defendant Charles Bourne, who asked this deponent, if he, the said Charles Bourne, had not had the pleasure of seeing this deponent in the West-Indies, to which this deponent answered he believed he might, but this deponent could not then recollect at what time or place in particular, he had so seen him, as this deponent never had any acquaintance with the said Charles Bourne. And this deponent saith, that the said Charles Bourne then asked this deponent, what ship this deponent belonged to, and how long he had been arrived from the West-Indies, when this deponent informed the said Charles Bourne, that he this deponent belonged to, and came home in the Resolution, and the said Charles Bourne then said to this deponent, You then know the gallant knight, Sir James Wallace, pray how do you like him; to which this deponent replied, that he liked him very well; and the said Charles Bourne, expressing some sur-
 prize

prize thereat, told this deponent, that he, the said Charles Bourne, had served on board the Warrior, whilst that ship was under the command of the said Sir James Wallace, and that the said Sir James Wallace had used him, the said Charles Bourne, very ill, whilst he was under his command, and that he, the said Charles Bourne, was then come to Bath, on purpose to call the said Sir James Wallace to account for the same, or expressed himself to that purport, or effect; but the said Charles Bourne did not inform this deponent in what manner, or on what account, or at what place, the said Sir James Wallace had so used him very ill, but made use of many scandalous words and expressions, reflecting upon the conduct and character of the said Sir James Wallace; and this deponent therefore resolved to wait upon the said Sir James Wallace the next morning and inform him of the same, as this deponent knew that the said Sir James Wallace intended to leave Bath on the day following. And this deponent saith, that the next morning this deponent met the said Sir James Wallace walking in the Crescent, and asked him if he had seen the said Charles Bourne, when the said Sir James Wallace informed this deponent, that the said Charles Bourne had the day before sent a waiter from the White Hart Inn to him the said Sir James Wallace, with a verbal message, that a gentleman at the White Hart wanted to speak to him the said Sir James Wallace, without sending any name, and that on his the said Sir James Wallace's having sent back the waiter to enquire the gentleman's name, the same waiter had returned, and told him the said Sir James Wallace, that the gentleman did not chuse to send his name, but desired to know, whether he the said Sir James Wallace would go to him there or not, and that on his the said Sir James Wallace having returned for answer, that he certainly would not go to any one ashamed of telling his name, the said Charles Bourne had sent back the said waiter a third time, to inform the said Sir James Wallace that the gentleman's name was Bourne, and that on the said Sir James Wallace's having returned for answer, that he had no business with that gentleman, the said Mr. Bourne

Bourne had sent him a very abusive letter, which had induced him the said Sir James Wallace to believe, that the said Charles Bourne intended to have a private rencounter with him, and that in order to be prepared, in case the said Charles Bourne should attack him, he the said Sir James Wallace had that morning been walking in the public streets and places of Bath, with his pistols in his pocket, and that the said Charles Bourne had met the said Sir James Wallace a little before this deponent joined the said Sir James Wallace, in the street where the said Sir James Wallace lodged, and that on the said Charles Bourne's going up to the said Sir James Wallace, and beginning to speak to him, the said Sir James Wallace had told him that he could have no conversation with him, but to send his friend and propose his terms, and that he the said Sir James Wallace was provided for him, and had shewed him one of his pistols, and told him, that if he the said Charles Bourne attempted to insult him he would put him to death, and that the said Charles Bourne thereupon went away abusing him the said Sir James Wallace, and that he the said Sir James Wallace then expected to receive a message from the said Charles Bourne, in consequence of what he had so said to him, and desired this deponent would accompany him, in case he should have occasion to meet the said Charles Bourne, in consequence of any message which he the said Sir James Wallace might receive from the said Charles Bourne, which this deponent promised to do. And this deponent saith, that he afterwards walked about the streets in Bath with the said Sir James Wallace for a considerable time. And this deponent saith, that after having walked about with the said Sir James Wallace for some time, the said Sir James Wallace desired this deponent to dine with him, which this deponent believes the said Sir James Wallace did with a view of having this deponent to be a witness of his conduct, upon his receiving any message from the said Charles Bourne. And this deponent saith, that he afterwards went home to dress, and on his going to the said Sir James Wallace's to dinner, the said Sir James Wallace informed this deponent, that since they had parted, he the said Sir James

Wallace had received a letter from the said Charles Bourne, which the said Sir James Wallace then gave to, and desired this deponent to read, and asked this deponent in what light he considered the said letter, when this deponent told the said Sir James Wallace, that in the opinion of this deponent, the said letter contained nothing but scandalous abuse, and seemed to this deponent to have been written by the said Charles Bourne, with an intent to provoke the said Sir James Wallace to send a challenge to the said Charles Bourne; and the said Sir James Wallace said, that he perceived that the said Charles Bourne meant nothing but abuse without coming to a point, and that he therefore did not think it worth his while to detain his family any longer at Bath, and that as he had arranged all his matters with a view of leaving Bath the next day, he would not stay there any longer on account of the said Charles Bourne. And this deponent saith, that about noon the next day, being Sunday, the eighth of December, the said Sir James Wallace and his family left Bath, and that in the evening of the same day this deponent called at the White Hart Inn, and inquired if the said Charles Bourne was there, and that the said Charles Bourne, who was then in a room which opened into the passage where this deponent was standing, at the time that he made the said enquiry, and who, as this deponent believes, heard this deponent make such enquiry, or saw this deponent go into the said inn, immediately came out into the passage and told this deponent, that he the said Charles Bourne took it very kind in this deponent's calling upon him there, and desired this deponent to walk into the room, when this deponent told the said Charles Bourne, that he, this deponent, wished to be informed by the said Charles Bourne, of some of the particulars that had happened between him and the said Sir James Wallace, as this deponent had heard that he the said Charles Bourne had been calling the said Sir James Wallace a coward, a name which this deponent knew the said Sir James Wallace did not deserve, and that he the said Charles Bourne had reported in many places, that he had called upon the said Sir James Wallace, to give him the said

said Charles Bourne the satisfaction of a gentleman,
 which the said Sir James Wallace had refused to do,
 upon which the said Charles Bourne said to this de-
 ponent, that he the said Bourne did not believe the said
 Sir James Wallace to be a coward, but that the said Sir
 James Wallace had behaved to the said Charles Bourne
 like a scoundrel and a rascal, and had refused to give
 him the satisfaction of a gentleman, and that he the said
 Charles Bourne would cane the said Sir James Wallace
 wherever he met him, upon which this deponent told the
 said Charles Bourne that he had no cause or reason what-
 soever, for saying what he then did respecting the said
 Sir James Wallace, that the letters which the said
 Charles Bourne had sent to the said Sir James Wallace,
 and which this deponent told the said Charles Bourne
 the said Sir James Wallace had shewn to this deponent,
 did not import any demand of gentleman-like satisfaction,
 or contain any thing but mere abuse, and that this de-
 ponent could not consider any of the messages which the
 said Charles Bourne had sent to the said Sir James Wal-
 lace by the waiter of the inn, in the light of a message,
 to be sent from one gentleman to another upon such
 business, but that if the said Charles Bourne had sent any
 gentleman to the said Sir James Wallace with a proper
 message, this deponent believed that the said Sir James
 Wallace would have answered the same, and met the
 said Charles Bourne, and this deponent then also told
 the said Charles Bourne, that the letters which had been
 sent by him to the said Sir James Wallace, appeared to
 this deponent to be written with a view or intent to pro-
 voke the said Sir James Wallace to send a challenge to
 the said Charles Bourne, to which the said Charles
 Bourne replied, yes, that he wished to have had it so,
 and that he had not sent the said Sir James Wallace any
 written challenge, for that he had rather Sir James Wal-
 lace should have challenged him the said Charles Bourne,
 and that he the said Charles Bourne knew the said Sir
 James Wallace, and therefore should be very careful how
 he acted with him the said Sir James Wallace, or words
 to that effect, upon which this deponent asked the said
 Charles Bourne what then were his the said Charles

Bourne's intentions towards the said Sir James Wallace, in case the said Sir James Wallace had gone to him the said Charles Bourne at the White Hart Inn, upon any of the said messages, which the said Charles Bourne had sent to the said Sir James Wallace, by the waiter of the said inn, and the said Charles Bourne told this deponent, that he the said Charles Bourne did not then know what he should have done to the said Sir James Wallace, or how he should have acted, but that if the said Sir James Wallace had then refused to give him the said Charles Bourne satisfaction, he the said Charles Bourne was determined to have beaten the said Sir James Wallace, and the said Charles Bourne then asked this deponent, if he, this deponent, thought that the said Sir James Wallace would still meet him the said Charles Bourne, in case the said Charles Bourne should send a gentleman to the said Sir James Wallace with a proper message, and this deponent told the said Charles Bourne, that this deponent believed the said Sir James Wallace certainly would do so, and the said Charles Bourne then said that he would go immediately to London, and get a gentleman there to wait upon the said Sir James Wallace, and that if the said Sir James Wallace did not then give him, the said Charles Bourne, satisfaction, he, the said Charles Bourne, would immediately publish the letters, which he the said Charles Bourne had written, and sent to the said Sir J. Wallace.

PETER DUPUY ABBOTT,

*Sworn before me, at my
house in Lincoln's Inn
Fields, this 21st day of
June, 1783,*

F. BULLER.

*Re-sworn at Westminster-hall
30th June, 1783.*

F. BULLER.

A F F I.

AFFIDAVIT of ARTHUR CHARTERS MURPHY, Esq. No. XV.

ARTHUR CHARTERS MURPHY, of White-hall, Westminster, and county of Middlesex, Esq. and JOHN JACKSON, servant to the said Arthur Charters Murphy, make oath and say, and first the said Arthur Charters Murphy for himself saith, that some time in or about the month of August, 1781, he, this deponent, being walking upon the causeway which leads from the stairs, commonly called White-hall stairs, to the river; and having with him, in company, and under his care, two boys; and being followed by a very favorite, and remarkably beautiful spaniel dog, the deponent heard some persons behind him upon the said causeway, and almost at the same instant hearing the said dog, then walking close behind him, give a loud yell, he turned round to see who had struck, or otherwise ill-used the said dog, concluding the said stroke to have been given by some one of the boatmen who generally ply at the said stairs, or by some person of that class or description, when he saw three men, one of whom he afterwards discovered to be Sir James Wallace, prosecutor in this cause, another to be Mr. William Sleigh, an attorney, who lived some where in or about Charing-Cross, or White-hall aforesaid, and the other person to be a Mr. Thompson, a captain of a ship in the service of the East India Company. And deponent saith, that upon seeing the said Sir James Wallace with a stick in his hand, and in an express attitude of having struck the said dog, he felt himself much hurt thereat, and thinking himself called upon to notice an action which he conceived to be a very high affront to him, he addressed the said Sir James Wallace with as much mildness as the nature of the matter would possibly admit, and told him that it was not genteel to strike the said dog in that manner; upon which deponent saith, that the said Sir James Wallace, and the other parties in his company, instead

instead of making any kind of apology for the said stroke, seemed very much to exult upon the occasion; declaring that deponent had not any right to take up the passage with his dog and his children, or words to that effect; whereupon deponent repeated his first observation, intending, if possible, at the same time to drop the business, foreseeing, from the disposition of the parties, that if continued, it would become more serious than this deponent wished; but to this deponent's further surprize and indignation, the said Sir James Wallace flew at the said dog, and struck him a third and a fourth time, demanding of deponent, *what he thought of that*; whereupon deponent saith, that being then very much provoked at the conduct of the said Sir James Wallace, the deponent answered, *that he then was convinced of what he at first suspected only, that he, meaning the said Sir James Wallace, was a scoundrel and paltroun,* or words to that effect. And deponent further saith, that thereupon the said Sir James Wallace flew at deponent, seized him by the collar, tore his stock, or neckcloth, shirt and waistcoat, and attempted, by several malicious kicks, at a particular part of his body, to do great injury. And deponent saith, that finding himself thus treated by a person who was at that time an utter stranger, and whose deportment and manners were so very outrageous and ruffianly, he, this deponent, determined to correct and punish him for his insolence and indecency, and thereupon in turn tore his shirt, stock, and waistcoat, and also gave him several kicks in return for those given as aforesaid by the said Sir James Wallace. And deponent saith, that having thus levelled the said Sir James Wallace, in point of situation, he gave him a blow in the face, which cut his lip, and occasioned him to bleed considerably, whereupon the said William Sleigh and the said Mr. Thompson, interfered, and put an end to the scuffle, and all the parties agreed to retire to the chambers of this deponent, which were in the center of the building, annexed to the chapel of Whitehall, *and not in the upper part thereof*. And deponent saith, that at that time, and for several months before, Lieutenant Charles Bourne,

defendant

defendant in this cause, did live and had lived with him in the said chambers, and was then in a very feeble state of health, in consequence of a desperate wound which he received on service in North America, in the remarkable action between the Iris and the Hermione frigate, near New-York, in North America, and that the said Charles Bourne was at that time in the drawing-room of the said chambers, with his arm in a crape sling, who, upon seeing this deponent and the other parties enter the said room, enquired what was the matter, or the occasion of the affray, whereupon the said Sir James Wallace, flew at the said Charles Bourne, and seized him by the breast, demanding *if he would take the quarrel upon himself*. And deponent further saith, that the said Charles Bourne answered, that he, meaning the said Sir James Wallace, had got into good hands, but that possibly when he had done with Mr. Murphy, meaning this deponent, he might call him to account for his rudeness. And deponent further saith, that after much conversation, the said Charles Bourne observed, that the quarrel aforesaid was a mere accident, and that if the parties therein had known each other it would not have happened, and together with the said Sleigh and the said Mr. Thompson, used every argument to conciliate the difference which had happened. And deponent saith, neither himself, nor the said Charles Bourne, as deponent verily believes, knew until that moment, who, or what the said Sir James Wallace, the said Sleigh, or the said Mr. Thompson were. And deponent freely owns, that upon hearing the name of Sir J. Wallace, which at that time had been sounded and resounded from all the public news-papers, and who was then reputed a man of courage and public service, he was extremely sorry for the abject situation to which he had by his ill-conduct, reduced himself, and much concerned that it had fallen to his, this deponent's lot, to be the instrument of his disgrace, this deponent always respecting the character of a brave man. And this deponent further saith, that from the repute which the said Sir James Wallace then bore, he, this deponent, examined

mined him closely, to observe if he was at that time
 any way intoxicated with liquor, and wished if possi-
 ble to find an excuse for the outrage and assault herein men-
 tioned. And this deponent admits that he might very possi-
 bly, under those sentiments, wish that the said dog had
 been in the river before it occasioned such dispute and vio-
 lence. But deponent most positively and solemnly de-
 clares, that he never did express any contrition for his
 part he had acted upon the occasion, possessing at that
 moment what he still continues to possess, the entire re-
 probation of his own breast; and deponent saith, that
 after some time the said Sir James Wallace and his two
 companions departed, seemingly reconciled. And depon-
 ent further saith, that on the morning of the next day
 after the day upon which the said affray happened, the
 said Sleigh called at the chambers of the deponent, as be-
 fore said, and enquired for the said Lieutenant Charles
 Bourne, and being introduced, remained in private with
 him for some time, when the said Charles Bourne came
 to this deponent and shewed him a letter directed to Sir
 James Wallace, sealed with a wafer, upon which was im-
 pressed two letters, one of which was an M, saying that from
 the letter upon the said wafer, said Sleigh said he appreh-
 ended it came from Mr. Murphy, meaning this deponent.
 To request of him, the said Charles Bourne, that he would
 prevail upon this deponent to let the dispute drop. And
 deponent further saith, that the said Charles Bourne did
 then use arguments to prevail upon him to let the matter
 drop. And deponent saith, that after denying the said
 letter to be his writing, or any knowledge thereof, the
 said Charles Bourne returned to the said Sleigh, who
 upon hearing what had passed between deponent and said
 Charles Bourne, retired seemingly well satisfied with the
 success of his application. And deponent further saith
 that in some time afterwards, being in company
 with the Reverend Doctor Morgan, confessor to his
 majesty's household, and Edward Morse, Esquire,
 chief justice of the province of Senegambia, two
 very intimate friends, the said Reverend Dr. Morgan
 proposed that deponent should, by way of making light
 of the business, and easing, as much as possible, the
 feeling

feelings which the said Sir James Wallace, must necessarily experience on that occasion, write to him, the said Sir James Wallace, assuring him that he did not entertain any rancour, or ill blood, but that on the contrary, he wished to become a debtor to the goodness and generosity of the said Sir James Wallace, by recommending to his patronage a young man who had been at sea, and would perhaps be a credit to his attention. And deponent further saith, that at the request, and by the advice of the said Dr. Morgan, and the said Edward Morse, Esq. and also agreeably to his own concurring sentiment and wish, he did write the letter annexed to the affidavit of the said Sir James Wallace, and the said Sleigh. But deponent most positively declares, that he never entertained the smallest idea of contrition for the part he had taken, as mentioned aforesaid in the aforesaid transaction at Whitehall-stairs. And the said John Jackson, for himself saith, that on the day of the transaction aforesaid, he was present in an apartment belonging to his master, Mr. Murphy, when his said master and Sir James Wallace, together with a Mr. Sleigh, an attorney and another person, who this deponent has since been informed was a Captain Thompson, in the East-India trade, entered the said apartment, and that in some time the said Sir James Wallace seized Lieut. Charles Bourne, defendant in this cause, by the breast, or laid his hands violently on his breast, demanding of him, the said Charles Bourne, if he would take the quarrel upon himself, which the said Charles Bourne refused to do, until the said Sir James Wallace had settled his dispute with Mr. Murphy, meaning this deponent's said matter, aforesaid.

ARTHUR CHARTERS MURPHY.
JOHN JACKSON.

AFFIDAVIT of PAUL CREBIN.
No. XVI.

PAUL CREBIN, Lieutenant in the Portsmouth division of his majesty's marine forces, maketh oath and saith, that some time in the latter end of the year 1781,
n the

defendant, Charles Bourne, applied to this deponent to change tours of duty with him, and go in his room in the Warrior, giving as his reason for such application, his dislike to sail with Sir James Wallace, who he had known to act with great impropriety in a quarrel he had had with a Mr. Murphy, of White-hall; but deponent, for several reasons, declined complying with the said Charles Bourne's request. And this deponent farther saith, that to his certain knowledge the said Charles Bourne made applications to several other officers to the same purpose and effect.

PAUL CREBIN.

*Sworn before me at South-
wark, this 19th of August,
1783.*

W. WINTER:

AFFIDAVIT of CHARLES BOURNE,
No. XVII.

CHARLES BOURNE, first Lieutenant of marines, maketh oath, that he, this deponent, being serving on board his majesty's ship the Warrior, in the month of February, 1782, Sir James Wallace, Knight, who then commanded the said ship, put the following question to him, and to Augustus Markett, one of the Lieutenants serving on board the said ship, that is to say, "Why, if you thought yourselves aggrieved, did not you call me out." And the said Charles Bourne further saith, that all which has been advanced by the said Sir James Wallace, Knt. or any other person, respecting the said Charles Bourne and the said Augustus Markett, having quarrelled with the inhabitants of Madeira, is fictitious, and void of the least foundation. And this deponent most solemnly swears, that there were no weapons whatever in the room in which he waited expecting to receive Sir James Wallace at Bath. And he most positively denies having ever made any apology to the earl of Cork, as stated in the affidavit of that noble lord.

*Sworn before me, this
day of 1783.*

A F F I -

AFFIDAVIT of JOHN WEIR, Esq.
No. XVIII.

JOHN WEIR, Esq. late Surgeon of his Majesty's ship the London, maketh oath and saith, that some time in the month of July, 1782, he was walking with Lieut. Charles Bourne, of the Marines, at Port-Royal in the island of Jamaica, when the said Charles Bourne looking up, said to this deponent, there is the very man I want, who has treated me ill, or words to that effect; on which this deponent, turning about, and seeing two men together, asked if it was Sir James Wallace, to which the said Charles Bourne replied, yes, and immediately went up and civilly accosted the said Sir James Wallace, demanding redress for the injuries he had received, but the said Sir James Wallace refused to give him that redress, and seemed much inclined to go away; the said Charles Bourne told the said Sir James Wallace, he was not the brave man he wished the world to think him, but that he was a gasconader and pilferer of fame, and that if he did not give him satisfaction, he, the said Charles Bourne, should think himself obliged to cane him, the said Sir James Wallace; after which the said Sir James Wallace went away, and the said Charles Bourne, with this deponent, joined some gentlemen, who were at a few yards distance. And this deponent further most positively saith, that the said meeting was at that time of the day which was most public at Jamaica, and that the said Charles Bourne did not come out of a negro, or any other hut, or house, but had for a considerable time been conversing with this deponent, before the said Sir James Wallace came in sight.

JOHN WEIR.

*Sworn at the Guildhall,
London, August 3d, 1783.
before me,*

JOHN HART.

AFFIDAVIT of JAMES BROOK- ING, No. XIX.

JAMES BROOKING, of his majesty's ship Ajax, maketh oath and faith, that he was passing close by Sir James Wallace and Lieutenant Charles Bourne, when they met at Port-Royal in the island of Jamaica, in the month of July, 1782, and saw the said Charles Bourne lay his hand upon his sword, and demand satisfaction for all treatment he had received; declaring that he would cane the said Sir James Wallace, if he did not do him justice, or words to that effect. And this deponent further saith, that it was at that time of the day when most people were abroad, and that Sir James Wallace did not shew the least inclination to come to the point, though seemingly urged in the warmest manner by the said Charles Bourne to do so. And this deponent further saith, he verily believes it was only the intention of the said Charles Bourne to obtain gentlemanlike satisfaction from the said Sir James Wallace.

JAMES BROOKING.

*Sworn at the Guildhall,
London, Aug. 30th,
1783, before me.*

JOHN HART.

AFFIDAVIT of M. DANIEL SWYNY, No. XX.

M. DANIEL SWENEY, Lieutenant of his majesty's marine forces, maketh oath and faith, that some time in the latter end of the year 1781, this deponent being then at breakfast with Captain Bonham of the Norfolk East India-man, Lieutenant Charles Bourne came to this deponent and requested he would change with him, the said Charles Bourne, and go in his room on board the Warrior, giving, as his reason for such application, his dislike to sail under the command of Sir James

James Wallace, who then commanded her, and whose conduct the said Charles Bourne said he had the greatest reason to disapprove of; but this deponent not chusing to serve with a man of exceptionable character, declined complying with the request of the said Charles Bourne, as he imagined it was likely he might experience the same dissatisfaction which he, the said Charles Bourne, apprehended.

M. DAN. SWYNY.

*Sworn before me, this
1st day of Sept.
1783, in Middle-
sex,*

WILLIAM HYDE.

AFFIDAVIT of SEPTIMUS PEACOCKE.

No. XXI.

SEPTIMUS PEACOCKE, of Lincoln's-Inn Fields, Lieutenant in his majesty's eighty-eighth regiment of foot, maketh oath and faith, that some time in the month of July 1782, he was present at Port-Royal in the island of Jamaica, and saw the meeting between Sir James Wallace Knight, and Lieutenant Charles Bourne, the defendant in this cause; and this deponent most positively faith, that the said Charles Bourne did not come out of a negro, or any other hut, or house, at the time of the said meeting, which was at the most public hour of the day, but was, and had been walking, apparently perfectly sober, with a gentleman; and this deponent farther says, that having heard much of the ill-treatment received from the said Sir James Wallace, by the said Charles Bourne, he was induced to stop to see the result, when after a conversation of about one or two minutes, this deponent saw the said Charles Bourne draw his sword almost out of the scabbard, but that the said Sir James Wallace did not draw, or attempt to draw, a small sword which he also wore, the said Charles Bourne returned his sword, after which the said Sir James Wallace went away, saying something that this deponent was at too great a distance distinctly to understand.

SEPTIMUS PEACOCKE.

*Sworn at the Guildhall, London,
this 22d July 1783, before me,*

NATH. NEWNHAM.

**AFFIDAVIT of JAMES RICHARDS
and HENRY HODGE, No. XXII.**

JAMES RICHARDS, Purser of his Majesty's ship **Warrior**, Sir James Wallace late commander thereof, and **HENRY HODGE**, Lieutenant in the Portsmouth division of marines, and late on board the **Warrior**, severally make oath and say, that during the time the said ship **Warrior** was at the island of **Madeira**, in the month of **February**, in the year of Lord, 1782, which was about five or six days, they, these deponents, never saw **Charles Bourne**, a lieutenant of marines, on board the said ship, any wise drunk, or intoxicated by liquor, nor did these deponents ever see him so, whilst he was on board the said ship, nor did they ever hear that he, the said **Charles Bourne**, was so, during the said ship's stay at **Madeira** as aforesaid; nor do they believe that he was any wise drunk or intoxicated, during the said ship's stay at **Madeira** as aforesaid; nor did these deponents ever see or hear, nor do they believe, that the said **Charles Bourne** in any manner insulted, or quarrelled with any of the inhabitants of the said island; and that they, these deponents, though they were on shore on the said island, at the time of the said ship's stay there; and this deponent, **James Richards**, was on shore the greatest part of the time of the said ship's stay, never heard, nor do they believe, that the said **Charles Bourne's** [hat was taken off his head by any person, at the said island. And these deponents further say, that upon the said **Charles Bourne's** coming on board the **Warrior**, at the said island, the said Sir James Wallace sent for him into his cabin, and that upon the said **Charles Bourne's** coming down into the ward-room, after he came from the cabin, both the said **Charles Bourne** and **Augustus Markett**, one of the lieutenants of the said ship, said, in these deponents hearing, that Sir James Wallace had said to them, "If you find yourselves aggrieved by me, why don't you one by one call me out, to give you the satisfaction of a gentleman."

JAMES RICHARDS.
HENRY HODGE.

Sworn at Portsmouth,

July 16, 1783,

before me, JOHN CARTER, Mayor.

AFFIDAVIT

AFFIDAVIT of AUGUSTUS MARKETT, and GEO. PARIS MONKE.
No. XXIII.

AUGUSTUS MARKETT and **GEORGE PARIS MONKE**, Lieutenants in the royal navy, and late Lieutenants of his Majesty's ship *Warrior*, jointly and severally make oath and say, that they the said Augustus Markett and George Paris Monke for themselves severally say, that in conversations they had with Lieutenant Charles Bourne, defendant in this cause, before the said ship *Warrior's* sailing for the West Indies, in the year 1781, the said Charles Bourne had frequently expressed the distress he felt at being ordered under the command of Sir James Wallace, giving for reason that he was averse to serve under the said Sir James Wallace, because the said Sir James Wallace had, in a quarrel with a gentleman named Murphy, behaved in a most ungenerous manner. And the said Augustus Markett saith, that the whole of the evidence stated, respecting the defendant, and the said Augustus Markett refusing to take off their hats in the public theatre at the Island of Madeira, and their having received orders by a serjeant, sent by the Governor for that purpose, and of their having been concerned in riots and quarrels with the inhabitants, and having been pelted by them, is totally void of truth and foundation. And the said George Paris Monke saith, that he was on shore with the said defendant, Charles Bourne, and the said Augustus Markett, at the island of Madeira, and he never saw, or ever heard of any drunkenness or riotous improper behaviour of the said Charles Bourne, and Augustus Markett. And each of these deponents jointly and severally say, that the defendant did not at any time cause disputes in the ward-room among the officers, but was always respected by them for his peaceable and gentlemanlike behaviour; and that the conduct of Lieutenant Spry, then first lieutenant of the said ship *Warrior*, one of the witnesses in support of the prosecution in this cause, was such, that the officers in the ward-room found
it

it necessary, for the happiness of their own society, to exclude him from their mess, and to desist from all further conversation with him, that their duty, as officers on board the same ship did not require. And the said Augustus Markett and George Paris Monke say, that some time in the month of April, about the hour of nine o'clock in the evening, Mr. Stephenson, one of the lieutenants belonging to the said ship Warrior, being much intoxicated with liquor, after dining with Sir James Wallace, entered the ward-room, and grossly insulted the said Charles Bourne, defendant in this cause, wanting to fight him; and these deponents say, that upon that occasion, the said Charles Bourne conducted himself with the strictest prudence and coolness, and upon the succeeding day the said Lieutenant Stephenson fully acknowledged the impropriety of his conduct, and made an ample and open apology to the said Charles Bourne for the same, which the said Charles Bourne received with the greatest good humour, and every mark of generosity and forgiveness.

W. MARKETT.
G. P. MONKE.

Sworn before me,
August 22, 1783.

Exc, EAR

FINIS.

Lieutenant NICHOLSON being extremely ill, Mr. Bourne is deprived of an affidavit promised by that gentleman.

Mr. Bourne would have produced this report of his trial, and the proceedings against him, but that some weeks elapsed before he could procure the notes from the short-hand writer, or copies of the affidavits, the originals having been detained some time by Mr. Justice Willes.

E R R A T A.

Page 79. l. 23. for HALF-PAY, read PAY.

Appendix, p. 18, for HAWKES, Esq. read HAWKER, Esq.

Lieutenant Nicholson being extremely ill, Mr. Bonner
is deprived of an efficient promoter by these
means.

Mr. Bonner would have produced a report of his trial,
and the proceedings against him, but after some weeks delay
and before he could procure the notes from the short-hand
writer, or copies of the affidavits, the originals having been
detained some time by Mr. Justice Willes.

E R A T A

Page 10, l. 22. for HAVE-PAY, read PAY.
Page 11, l. 12. for HAWKES, ELP. read HAWKES, ELP.